S. HRG. 102-590

S. 22, INTERSTATE GREYHOUND RACING ACT OF 1991

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

FIRST SESSION

AUGUST 1, 1991

Printed for the use of the Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE
52-312cc WASHINGTON : 1992

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-038545-8

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THURSDAY, AUGUST 1, 1991

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 10:10 a.m. in room SR–253, Russell Senate Office Building, the Hon. John B. Breaux presiding.

Staff members assigned to this hearing: Moses Boyd, senior counsel; and Sherman Joyce, minority staff counsel.

OPENING STATEMENT OF SENATOR BREAUX

Senator BREAUX. The Senate Commerce Committee will hear testimony on S. 22, the Interstate Greyhound Racing Act of 1991. I would like to thank the witnesses for being with us today and sharing their knowledge of what is a very fast-growing spectator sport in America. The information that they bring will be helpful to us in arriving at a consensus on legislation which will prove beneficial to all participants in the industry.

There are 48 greyhound tracks in only 14 States in addition to 3 in Mexico, yet greyhound racing is the sixth largest spectator sport in our country. The 1988 attendance at greyhound races was over 26.6 million—more than $3.2 billion was wagered. Those tracks generated $228.8 million or more for State and county governments. No doubt that explains why more greyhound racing tracks are under construction—10 tracks are planned or are being built in Texas, Kansas, and Wisconsin.

My bill S. 22 is modeled after the Interstate Horse Racing Act, which passed this committee and the Congress in 1978. Similarly, the intent of S. 22 is bring stability to the greyhound racing industry. Instability and destructive friction is bred when any important industry participants are not sharing equitably in the proceeds of the racing events. Our legislation relates specifically to the interstate commerce situations involving interstate simulcasting or transmission via satellite of the greyhound races from a track in one State to an offtrack facility in another State. The bill addresses the situation where greyhound races are transmitted across lines without the permission and in many cases, the knowledge of the owners of the greyhounds involved. And like owners of racehorses, a greyhound owner is not included in the negotiations of interstate simulcasting contracts. Our legislation remedies this situation.

S. 22 requires that the track running the race have a written agreement with the greyhound owners and representative as to the

terms and conditions of the interstate simulcast before the track negotiates an interstate simulcasting contract with an out-of-state offtrack betting facility. The bill does not cost the Federal Government anything. It does not create any new Federal agencies or offices. It does not interfere with the States' rights to determine gambling policies.

All the legislation does is extend to the greyhound owner the same rights that this committee and the Congress extended to the racehorse owners some 13 years ago when it approved the Interstate Horse Racing Act of 1978. These are rights that any owner or producer of commercially valuable property should reasonable expect have a in a just and fair society, whether the property is greyhounds, movies, books, or the working papers of attorneys.

I would like to welcome our first panel. We will have two panels, the first one consisting of Mr. Gary Guccione, Secretary-Treasurer of the National Greyhound Association; Mrs. Janet Allen, of the Greyhound Breeder Kennel Operators; and Mr. David Brosnan, who is Chairman of the Simulcasting Committee of the National Greyhound Association, and I understand will be accompanied by Mr. Herb Koerner, who is President of the National Greyhound Association.

Gentlemen and lady, we are delighted to have you and look forward to statement. Welcome to the committee. Mr. Guccione, we have you down first, if you would like to proceed.

STATEMENT OF GARY GUCCIONE, SECRETARY-TREASURER, NATIONAL GREYHOUND ASSOCIATION

Mr. GUCCIONE. Mr. Chairman and members of the committee, thank you for the opportunity to testify before you today. My name is Gary Guccione. I am the secretary-treasurer of the National Greyhound Association. I would like quickly again to introduce my colleagues that are at the table. At the far end to my right, Mr. E.J. Alderson, a greyhound owner and breeder from St. Petersburg, FL; Mr. Ross Lingle, a breeder from Altus, OK, who is vice president of the National Greyhound Association; Ms. Janet Allen, a greyhound breeder and owner from Phoenix, AZ. To my left, Dave Brosnan, a greyhound owner and breeder from Gloucester, MA, and who is chairman of our simulcasting committee; and at the far end, Mr. Herb Koerner, who is from Hays, KS, owner and breeder, and also president of the National Greyhound Association.

We are here today as owners and breeders to testify in favor of S. 22, the 1991 Interstate Greyhound Racing Act. Simulcasting has clearly become the No. 1 issue in this great industry of ours in the last few years. There is tremendous potential in the simulcasting programs. However, there is a dark side that can damage the sport of racing. In order to be beneficial, it must equitably benefit all, and it must not be the instrument that destroys live racing.

Last year we heard from some of the track operators and through AGTOA, the American Greyhound Track Operators, specifically, that simulcasting is only being done on a small scale, yet at last count, 41 of the now 57 racetracks in the United States have at least experimented or are presently conducting some form of simulcast wagering. Those that are not are for the most part prohibited by their State laws to conduct simulcasting. But those laws are

quickly vanishing, and we look for further growth in this particular area.

It is made especially easy in the greyhound industry because of common ownership of many of the tracks. Conglomerates such as Delaware North, United Tote, the Rooney family, and others, that owned multiple tracks that allow this practice to be very easily accomplished.

Some track operators would tell you that in the beginning, yes, there was some unfairness in simulcasting, but not any more, that it is now being fairly conducted, that there are negotiations, there is fair purse being paid. We would submit to you that that just is not true. I would like to share with you an experience just last week to illustrate that point.

A couple of months ago, simulcasting of races began from the Portland, OR, track into Tucson, AZ. I believe it was one race. And it replaced a live race, interstate simulcasting. And on the phone last week I was talking to a greyhound owner and kennel operator from Portland and asked him what he felt about the simulcasting of his greyhounds in Portland into the track in Tucson. His response was, "what simulcasting?" He was not even aware that the simulcasting was going on. Obviously no permission, no equitable purse, no negotiations, not even notification.

Our cousins in the horse industry saw this threat long ago and sought and obtained the 1978 Interstate Horse Racing Act which is a beautiful piece of legislation that Ms. Allen will discuss in her testimony. The bill before you is patterned exactly after that 1978 act.

The way that simulcasting is being conducted today in greyhound racing is unfair and it is an insult to the greyhound owners and breeders. It is not with their permission, and it is not with equitable compensation. The problem is especially bad in greyhound racing because of a unique situation we have in greyhound racing known as the booking system.

This is a system whereby the tracks obtain the services of the racing greyhounds by the kennel operator. This is not necessarily the owner of the greyhound, but a kennel operator, a person who has access to 30, 40, 50 greyhounds, applying for a contract with the track. He submits a roster of the greyhounds he has access to, many of them leased, perhaps all of them leased. Sometimes there are as many as 100 or more kennel operators applying at some tracks for those contracts or bookings, yet only a handful, 16 or 20 at most tracks, receive a standard contract to race at that track. The system is void of any negotiations, the contracts are offered on a take-it-or-leave-it basis, so when the track operators talk about the present beauty of the current negotiating system, they are talking about no negotiating system at all.

The track operator has virtually total control of the terms of racing. And despite all the furor that the owners and breeders have raised in the last few years, despite the introduction of legislation that is before you, despite the track operator's efforts to portray the negotiations as legitimate, the unfairness prevails. Witness the ignorance of my friend in Portland over the simulcasting of his greyhounds to Tucson.

Witness also the efforts by at least two tracks in recent days to get the contract kennels racing at their tracks to say that they are opposed to this very legislation that would give owners the right to negotiate. That puts the kennel operators in a very precarious position and they fear their future status with the racetrack and their contracts. Yet, those that we talk to are holding firm in their support of S. 22. They ask no names be mentioned because again, the fear of reprisals or of jeopardizing their future contracts with the tracks.

This Senators, is what the track operators refer to as negotiating. And that is why you will hear some track operators say that yes, we will be happy to negotiate as long as it is with our kennel operators. And that is why the poor kennel operator who is in no position to deal at arm's length with the track could never be the group that represents the owners and breeders in negotiations. Well, S. 22 corrects that practice by requiring all segments with a proprietary interest, that is the owners, not the kennel operators, to have a legitimate chair at a legitimate negotiating table. That is what the Horse Racing Act did, and we ask that the standard of fairness be applied to the greyhound owners through passage of S. 22

Thank you. If there are any questions, I would be happy to answer them at the appropriate time, Senator.

[The prepared statement of Mr. Guccione follows:]

PREPARED STATEMENT OF GARY GUCCIONE

Mr. Chairman, Members of the Subcommittee, thank you for the opportunity to share our thoughts with regard to S. 22, the 1991 Interstate Greyhound Racing Act. After considering this testimony, along with the other statements to be provided by my colleagues, we hope you'll agree that this bill is vital for the future of our industry.

Greyhound racing, now conducted in 18 states, has enjoyed a tremendous boon in this country during the last two decades. It's a sports-industry that last year provided entertainment to more than 29 million fans, jobs and small-business opportunities for tens of thousands of people at various levels—from the racetrack to the greyhound farms—and tax dollars to state and local governments that last year exceeded $225 million.

Simulcasting—the simultaneous broadcast of races, as they are contested, to patrons wagering at sites other than the track where the races are conducted—has the capability of further accelerating the sport's growth and strengthening the industry as a whole. However, if left unchecked or unregulated, it also has the potential of dealing a severe blow to thousands of people whose livelihoods depend on the sport, as well as to the governments that rely on the tax dollars generated.

These possible scenarios involving simulcast wagering for our sport are by no means merely speculation. Our cousins in the horse-racing industry, traditionally confronted with the same problems we face (only they faced them a generation earlier), have already dealt with the issue of simulcasting. To protect their industry from the potential menaces of a simulcast system out of control, the horse industry sought—and received—federal legislation known as the 1978 Interstate Horse Racing Act. After 13 years of trial and testing, the legislation has proven to be a big benefit for the horse industry. At the same time, it has not cost the federal government any money, nor has it caused the creation or expansion of any federal agency to regulate it.

Therefore, when confronted with the same simulcast wagering issue, greyhound owners felt that the 1978 Horse Racing Act was the logical starting point. The result is the legislation before you today, S. 22, known as the 1991 Interstate Greyhound Racing Act. Except for the change in references from horse racing to greyhound racing, the two acts are virtually the same.

This report is intended to show why S. 22 is clearly important legislation for our industry. Discussion in this report will center on these two points:

(1) Basic background information on greyhound racing

(2) The benefits and problems of simulcasting

Additional reports, submitted by others in the industry, will focus on the history, long-range problems and economic impact of simulcasting upon our industry, if left unchecked (presented by Dave Brosnan, chairman of the National Greyhound Association's Simulcasting Subcommittee), and how S. 22 addresses the simulcast issue (presented by Janet Allen, a Phoenix breeder and kennel operator).

GREYHOUND RACING—BACKGROUND INFORMATION

Greyhound racing, as it's conducted in the world today (Australia, England, Ireland and the United States are the major racing countries), is a product of American ingenuity. It was first successfully tried on an oval track in 1919 in Emeryville, Calif., the brainchild of Owen Patrick Smith (known as the "Father of Greyhound Racing"), who developed the first effective mechanical lure. The first successful race meet was staged in Tulsa, Okla., in 1921. Greyhound racing gained much popularity in the mid-1920s when it was conducted at night under the lights, particularly in Florida, which was to become the hotbed of racing for decades. Growth was sporadic in the following decades, then—in the late 1960s, early 70s—the sport began gaining widespread popularity. Today it is conducted at nearly 60 locations in the states of Alabama, Arizona, Arkansas, Colorado, Connecticut, Florida, Idaho, Iowa, Kansas, Massachusetts, New Hampshire, Oregon, Rhode Island, South Dakota, Texas, Vermont, West Virginia and Wisconsin.

The "stars" of a race are the greyhounds themselves. These brilliant animals are sighthounds, hunters by tradition, and the fastest of all canine breeds, capable of reaching speeds beyond 45 miles per hour. The fact that they love to run and love to chase anything that moves, including the artificial lure that runs along the inside rail of a racetrack, makes the sport of racing possible. Eight greyhounds at a time compete in most races, running at various distances (5/16 of a mile the most common, but 3/8 and 7/16-mile distances are also run) over a quarter-mile oval.

Greyhounds are raised in all states of the country, but they are especially abundant in the Central Plains states and states where the sport is conducted. The owners and breeders register their greyhounds with the National Greyhound Association, headquartered in Abilene, Ks., which is the caretaker of the bloodline records of all racing greyhounds in North America. The NGA has been in existence since 1906 and is recognized by all racing jurisdictions in the United States as the sole registry for the sport. The NGA's membership is composed of 6,700 greyhound owners and breeders from across the country. NGA is a co-founder of the Greyhound Hall Of Fame and the American Greyhound Council, an associate member of the World Greyhound Racing Federation and the Association of Racing Commissioners International, Inc. It is also a charter member of the World Alliance of Greyhound Registries.

Another important duty of the National Greyhound Association is the identification of the greyhounds. Every breeding and every whelping (birth) must be reported to the NGA within 10 days. At 3 months of age, a greyhound pup is tattooed in the ears with numbers issued by the NGA that will identify the animal for life (coupled with its own unique coloring, feet and toenail markings). All greyhounds are named through the NGA prior to their going to the racetrack.

Like the stars and champions of other sports, greyhounds are athletes. No less than the best of feed and care are provided in order for the greyhounds so they can perform at their peak ability. Today the cost of breeding and raising a greyhound to track-age (18 months of age) is about $2,500. Greyhounds usually race until they are about 4 to 5 years old.

Most tracks are privately owned and are operated as proprietary profit-making ventures. All wagering is conducted through on-track totalisator systems with the majority of racing held during the evening hours. Most tracks conduct 13 races at each performance at about 15-minute intervals.

Pari-mutuel wagering is the system that helps make greyhound racing the popular sport that it is—just as it does for quarter horse, thoroughbred and harness racing. Participants place their wagers on the outcome of a race, then a percentage of the money wagered (usually between 77 percent and 82 percent, depending on the individual state law and type of wager) is returned to those in the wagering public holding winning tickets. In this manner, the people are not wagering against the track or the "house" (as in casino-type gaming), but against themselves.

All aspects of racing are regulated by state racing commissions in order to protect the interests of racing fans. Of the 18 to 23 percent withdrawn from the pari-mutuel handle (aptly called the "take-out"), a portion goes to state and local tax revenues, with the remaining amount retained by the license holder to pay track operational expenses (purses, salaries, etc.) and as profit.

The excitement of greyhound racing and the extreme confidence participants have in the honesty and integrity of the sport, coupled with the expansion of racing to new jurisdictions, have all contributed toward steady growth in the sport in the last 20 years. This expansion is best reflected in the following statistics:

- In 1969, there were 36 tracks in 7 states; today there are 57 tracks in 18 states;
- The number of spectators grew from 12 million in 1969 to 29.4 million in 1990, ranking greyhound racing as the sixth largest spectator sport in America;
- Pari-mutuel handle (the amount wagered) rose from $660 million in 1969 to $3.4 billion in 1990;
- State and local tax revenues rose from $116 million in 1969 to $227 million in 1990.

These are clear indications that greyhound racing is indeed a major spectator sport in America. Greyhound racing has its own Greyhound Hall Of Fame, across from the Eisenhower Center in Abilene, Ks., lauded as a major attraction in Kansas and one of the best sports museums of its type in the country. Greyhound racing's stake-race program has several races each year where the win purse exceeds $50,000, with the total purse for the eight finalists around $150,000.

Conducted in only 16 of the 50 states, greyhound racing is capable of continued growth—especially with more state governments looking for tried and proven methods of increasing tax revenues while also spurring economic development. As that occurs, greyhound racing will become an increasingly important element in the lives of more and more Americans.

To understand some of the effects of simulcast wagering on greyhound racing, it's important to understand the contract or "booking" system and the standard methods of purse distribution in the industry—which are certainly different from the systems used in horse racing. A kennel operator wishing to apply for a contract to race at a track will notify the track of his intentions. He'll then submit an application to the track, along with a list of greyhounds (roster) he plans to race at the track. The track usually has a minimum requirement as to the number of graded dogs, distance greyhounds, etc. If the track wishes to "book" the kennel, it will send the kennel owner a standardized contract-the same contract sent to all the other kennels the track wishes to book to race at the track that season. A track may book anywhere from 14 to 30 kennels, depending on its situation, but the average number is usually between 16 and 20.

As you can see, *the "booking" system is totally void of any negotiations between the track and the kennel operator* or an owners' or operators' group. Because there is almost always a much longer line of people waiting to get "booked" into a racetrack than there are bookings, the track is in the enviable position to be able to tell potential kennel operators to take-it-or-leave-it. In effect: "If you don't like the terms we've set for you to run at our track, then go race elsewhere." Thus it is, whenever track operators refer to the beauty of the current "negotiating" system of greyhound racing—as they have in arguing against the adoption of this bill—they were referring to no negotiating system at all! It is our contention that one reason the American Greyhound Track Operators Association is opposed to this legislation is because the system of true negotiating is presently non-existent, with full and total control of the terms of racing in the track operators' hands.

As for the method of purse payment—a percentage of the amount wagered (the parimutuel handle) during each week is paid in the form of purses. This percentage is either mandated by legislation, or set by state racing commission policy or by the track itself. In some cases, all the purse money is distributed to the contracted kennels; in other cases, the money is paid directly by the track to the greyhound owner. The purse percentage paid varies from state to state, ranging from 2.7 percent in Alabama to 4.5 in the new racing state of Wisconsin.

THE ISSUE OF SIMULCASTING

Some 20 years ago, if a racing fan wanted to make a legal wager on a race, he or she had to go to the track where the race was being run. Simulcasting soon changed that in a big way.

Today, the methods of placing a legal wager on a race—be it in greyhound racing or horse racing—are practically endless. Races are simulcast from track to track (both intrastate and interstate), from track to betting parlor (both intrastate and interstate), from track to casino (primarily interstate), from one kind of track to another kind of track (greyhound to horse and vice versa); from a track that's open to one that's closed for the season; from one track to another racing facility that's currently conducting live racing. Simulcasting may involve two separate betting pools—the host track's handle and pay-offs being entirely independent from the re-

ceiving track's pari-mutuels; or the two tracks may have common pools and pay-offs (co-mingling). No doubt other new combinations involving simulcasting will continue to arise.

Simulcasting of races from one track to another is commonly referred to as intertrack wagering (ITW). Simulcasting of races to a facility other than a track-whether it's a casino, a theater, a lounge, a bowling alley, etc.—is referred to as offtrack betting (OTB).

What's the attraction of simulcasting? Quite simply, it makes it more convenient for more racing fans to place a wager on a race. By simulcasting races, a racetrack's market can be significantly broadened. That increases the pari-mutuel handle on the race, which, as was noted above, is the prime revenue source that pays taxes, purses, operational expenses and hopefully provides some profits.

Fueling the fires of simulcasting is an ever-increasing scramble for the entertainment dollar in this country. Racing, at one time, was one of only a handful of sporting-entertainment alternatives to the public. Today, the competition for the discretionary leisure dollar is fierce. Racing, in order to hold its own, has felt the need to make it as convenient as possible for fans to see and wager on a race. Increasing operational expenses, plus sagging attendance and pari-mutuel figures (largely due to the intense competition), have threatened the very survival of some horse tracks in recent years. Some racing experts have concluded that simulcasting may be the only mechanism that can keep many horse tracks afloat in the years ahead.

But there are some downsides to simulcasting, if the racing industry is not cautious how it proceeds. One involves the potential threat to live racing. Too much simulcasting, or simulcasting too deeply into markets where live racing exists, can negatively effect area tracks. Pari-mutuel handles and attendance drop, consequently tax revenues, purses, salaries, etc. decrease. It may even force the track to close, dealing a severe blow to everyone associated with the track, including the breeders and owners—horse or greyhound—that were providing the racing products to operate that facility. It's possible for simulcasting to be extremely beneficial to one segment of racing, but equally injurious to another. David Brosnan goes into greater detail in his report on this particular matter.

The biggest concern of greyhound owners and breeders with regard to simulcasting deals with this issue of fairness. Many owners have already experienced the frustration of seeing their greyhounds used for simulcasting, without the owners' permission. Adding insult to injury is the fact that, m most cases, the greyhound owners' are not being properly recompensated for the use of their greyhounds in the simulcasting programs. The bulk of profits are ending up in the pockets of the track operators, the owners of facilities receiving the simulcast, or the disseminators in the middle who set up the system—everyone except those whose greyhounds make the entire simulcasting system possible. This situation exists in greyhound racing today because of the lack of any federal guidelines such as those implemented by the 1978 Interstate Horse Racing Act. With no federal guidelines dictating fairness, simulcasting in greyhound racing is trampling over a segment of the industry that makes it all possible—the owners and breeders.

It is inconceivable to imagine a movie or title fight being shown on a cable or satellite system, without the key figures in the event—the actors or the boxers—somehow sharing in the financial benefits derived from those telecasts. It is even more inconceivable to imagine such programs being shown without their permission. Yet that unjust practice is going on every day when greyhound races are being simulcast across the country, for profit, without compensation going to the greyhounds' owners and without their permission.

S. 22 does not call for financial remuneration for the greyhound owners. It does not legislate the terms of simulcasting. It does not set the purse percentage owners should receive from simulcast wagering. What it does is this: It merely asks for that which was granted horse owners back in 1978 with the Interstate Horse Racing Act—the right to have a chair at the negotiating table, along with the track operators and the respective racing commissions, when the weighty decisions involving the simulcasting of their greyhounds are being made.

That's what the Horse Racing Act did. It required all parties involved to agree on the terms of simulcasting before it could be conducted across state lines. It established the proprietary relationship of the horse racing industry and its right to proper compensation when its product was being used. The 1991 Interstate Greyhound Racing Act asks no more, no less.

As mentioned earlier, it accomplishes this without any budgetary demands on the federal government, nor without an expansion of the federal bureaucracy. It is a wonderful piece of legislation whose merits have been proven in their application to the horse racing industry through the 1978 Horse Racing Act. It's time greyhound owners were granted this same allowance, this same degree of fairness—the right

to determine when and how their personal property, their greyhounds, should be used.

Thank you.

Senator BREAUX. Ms. Allen, did you have a statement?

STATEMENT OF JANET ALLEN, GREYHOUND BREEDER-KENNEL OPERATOR

Ms. ALLEN. Mr. Chairman, members of the committee, my name is Janet Allen, I am a greyhound breeder and a racing kennel owner from Phoenix. I am a member of the NGA's Board of Directors and Simulcasting Committee. And the first thing I would like to make very clear to you today is that the National Greyhound Association, representing the owners and breeders in this country is not against simulcasting. This is not an antisimulcasting bill. Anyone who has studied the simulcasting issue knows that will play an key and inevitable role in the future of racing.

We realize there are tremendous benefits to be obtained, and it is along with this realization that comes our concerns for the downside of simulcasting. And more of that will be outlined in Mr. Brosnan's report.

When the greyhound industry began looking for legislation to protect it from the dangers of simulcasting, it need look no further than the 1978 Interstate Horse Racing Act. This is a wonderful piece of legislation because it works. This was not an easy piece of legislation to get passed. It took, I believe, 6 years to get this bill through and it was the tremendous result of much work and much intellect. The merits of this bill have been tested over the past 13 years. It is legislation that is tried and proven. And, as Senator Breaux pointed out, it costs no additional tax dollars, nor has it expanded any bureaucracy.

In addition, the legal cause of action granted under the Interstate Horse Racing Act has tested only one Federal case. And my point here is that the history of this legislation shows that the cause of action will not clutter the court system. This bill has succeeded in its intent to allow simulcasting to benefit the sport of horseracing while not permitting the negative side of simulcasting to destroy it. And with the benefit of hindsight, this bill was indeed what horseracing needed. And we have full confidence that this same bill, except of course that ours pertains to greyhounds, is what is needed for greyhound racing today. And our situation does not differ from the horse industry regarding simulcasting. If it did, we would not be here with this bill.

In pointing out the few things this bill will do, it will provide protection for all involved in greyhound racing. Just how this will be accomplished very simply, and I believe this to be the nucleus of the entire bill, it will require that all parties who have an interest in the simulcasting of races must be in agreement with the simulcasting procedure if it pertains to an interstate situation.

And these parties, of course, would include the Racing Association, the owners group, which represents the majority of owners of greyhounds racing there, and the racing commissions in both the host and the offtrack States.

And another important thing this bill will do, and probably the most important, is immediately correct the blatant unfairness now

prevalent that permits the transmission of races without the express written permission of the owners of the animals. This bill would guarantee owner's proprietary rights to their racing animals. This bill is not a bill meant to further private interest of breeders, nor is it in any way a private relief bill for greyhound owners. It simply guarantees their proprietary rights.

I would also like to list a few of the things that this bill will not do. No. 1, it will not in any way interfere with intrastate simulcasting. No. 2, it will not restrict the expansion of interstate simulcasting so long as all parties who are involved are in agreement. No. 3, this Federal legislation will not interject Congress into the contractual business relationships between tracks and greyhound groups. Nor does it force the tracks to negotiate the terms of the racing contract with their kennels.

This bill sets no terms. Only guidelines that the affected parties must negotiate their own terms. No. 4, this bill does not encourage the expansion of gaming in States where those citizens have not supported the sport.

The Greyhound Racing Act does not legalize offtrack betting, period. It is not a gambling bill.

Simulcasting, as it is currently being conducted in greyhound racing boils down to a fairness issue. The present system in horseracing, which allows all parties with an interest in the interstate simulcasting of races, including the horse owners, to negotiate the terms of how their races will be used in an interstate simulcasting process is a just and fair one.

This has been deemed as such by Congress by virtue of passing the 1978 Inter-State Horse Racing Act.

That greyhound owners are not afforded the same privilege is an inequity. There is strong precedent for Congress to become involved in this issue. That greyhound owners' proprietary interest are not respected nor protected at the present time when it comes to simulcasting is unfair.

And to correct this unfairness we ask for your support in the enactment of this piece of legislation.

I would be happy, also, to answer any questions.

Thank you.

[The prepared statement of Ms. Allen follows:]

PREPARED STATEMENT OF MRS. JANET ALLEN

Mr. Chairman, Members of the Subcommittee, my name is Janet Allen I am a greyhound breeder and a kennel operator from Phoenix, Ariz., and a member of the NGA's Board Of Directors and Simulcasting Committee.

We wish to have it noted at the outset that the National Greyhound Association, representing the greyhound owners and breeders in this country, is not anti-simulcasting. Anyone who has studied the simulcasting issue knows there are tremendous benefits that can be obtained for our industry through the simulcasting system. It is also clear that simulcasting will play a key and inevitable role in the future of racing.

But with this realization comes concerns about the downside of simulcasting, as outlined in David Brpsnan's report.

When the industry began looking for legislation to protect it from the dangers of simulcasting it needed to look no further than the 1978 Interstate Horse Racing Act. Here was a piece of legislation that had been cried and proven, legislation that had cost the government no additional tax dollars, legislation that did not create any new agencies or expand the present bureaucracy. No less than 53 different drafts of that bill had been considered before the horse industry and Congress finally ar-

rived at the one that eventually passed, so we know a lot of homework went into the bill; it was not casually thrown together.

More importantly, the bill has gone through 13 years of trial. Its merits have certainly been tested in that time, when you consider all the revolutionary changes that have occurred in horse racing with regard to simulcasting since the bill's enactment. The horse industry is proud of that legislation and protects it vigilantly—for good reason. The 1978 Interstate Horse Racing Act has succeeded in its intent to allow simulcasting to benefit the sport, while not permitting the negative side of simulcasting to destroy it. Sure, horse racing still has disputes and problems with simulcasting. But there is no question that horse racing is much stronger for having passed the Interstate Horse Racing Act.

The comments made by Kentucky Senator Wendell Ford when that bill was being considered in 1978, as carried in the Congressional record, are so relevant to our cause here today that they bear repeating:

> "* * * those of us who have a vital interest in the future well-being of the Nation's horse industry have been working to draft a piece of legislation to protect that industry against the uncontrolled growth of off-track betting.
>
> "At the same time, we have tried to strike an effective balance by not imposing undue restrictions or unnecessary Federal encroachment on legal off-track betting operations in the United States. Another prime concern was preserving the rights of States to determine their own policies as they related to off-track wagering. * * *
>
> "* * * the real issue at stake in this measure is not only the health, stability, and long-term economic well-being of horseracing but the entire equine industry in this country. There are more than 23,500 horse farms in the country, some 400 racetracks, and more than 200,000 individuals whose livelihood is directly dependent on horse-racing. Little wonder then that racing is a $13 billion business, with far-reaching implications for many segments of this country's economy.
>
> "The birth of off-track betting operations several years ago raised the specter of unknown, but potentially grave consequences to the future of the horse industry.
>
> "As the interest in off-track betting expanded in many areas of the country, it became apparent to those of us concerned about the future of the horse industry that a national policy as it related to off-track betting was needed and, in fact, overdue.
>
> "The proposal now before the Senate would establish such a policy.
>
> "Just what does this measure accomplish?
>
> "It provides for a peaceful coexistence between the racing industry and interstate off-track betting, whenever mutually acceptable arrangements can be worked out between the track and State where racing is held and an off-track betting corporation in another State.
>
> "It keeps Federal involvement at a minimum and does not require any expansion of the Federal bureaucracy.
>
> "It protects the smaller racetracks as well as the larger tracks.
>
> "Finally, it guarantees the right of a State to determine its own policies, so long as they do not interfere with those of another State.
>
> "Let me make it clear that the sole purpose of any restrictive provisions in this measure is to control the unregulated proliferation of off-track betting. This measure maintains regulated off-track betting as a viable option for State consideration as both a revenue raising measure and a means of increasing interest in the sport of racing.
>
> "Let me also emphasize that this is not a bill legislating against off-track betting; rather it is a bill that allows States to protect these revenue-producing industries from outside and illegal competition.
>
> "If we fail to enact this legislation, I feel very strongly that the uncontrolled growth of off-track betting could lead to the demise of many smaller tracks and do irreversible harm to the horse industry and those States which rely heavily on tax revenues from racing.
>
> "* * * I am convinced that this is a fair and equitable measure which will aid and protect the horse industry, States, and the off-track betting interests. This bill assures the continued vitality of the racing industry, while at the same time establishing the lines of cooperation necessary for the expansion of interstate off-track betting operations. Without this legislation, it is extremely unlikely that the cooperation necessary for the peaceful coexistence of all parties involved can ever be realized."

Those very arguments apply today to our situation in greyhound racing. With the benefit of hindsight, having seen that this bill was indeed what horse racing needed,

we have full confidence that this very same bill—except for the fact that S. 22, of course, deals with greyhounds—is what's needed for greyhound racing today.

Exactly how would the Interstate Greyhound Racing Act provide protection for all involving in greyhound racing? First and foremost—and very simply—it would require that all parties who have any interest in the simulcasting of races must be in agreement with the terms of the simulcasting procedure if it pertains to an interstate situation. This would include the racing association, the owners' group which represents the majority of owners of greyhounds racing there, and the racing commissions in both the host and off-track states. Permission is also required of an operating track within 60 miles of an off-track betting office (or, if no track is open within 60 miles, the closest currently operating track in an adjoining state).

The bill also states that no off-track betting system may employ a takeout for an interstate wager which is greater than the takeout for corresponding wagering pools of off-track wagers on races run within the off-track state, except, of course, where a greater takeout is authorized by state law in the off-track state.

Violators of the act would be civilly liable for damages to the host state, the host racing association and the greyhound owners' group. The bill spells out the types of damages for each violation in Sec. 6, paragraphs 1 and 2.

Most importantly for the greyhound industry, the bill would immediately correct the blatant unfairness now prevalent that permits the transmission of races without the express written permission of the owners of the greyhounds—in the exact same manner that the Horse Racing Act requires the horse owners' group's permission before their horses can be simulcast. This will guarantee recognition of the greyhound owners' proprietary rights to their racing animals and that they have a voice in how their greyhounds are used in the interstate simulcasting process.

Besides not costing the government a penny, not creating a new governmental agency, and not expanding the existing bureaucracy, there are several other things that the 1991 Interstate Greyhound Racing Act does NOT do.

First, it does not interfere with intrastate simulcasting in a particular state. That authority would continue to rest exclusively with state jurisdictions. Whatever individual states wish to do with regard to simulcasting within a state is up to them.

Second, it does not restrict the expansion of interstate simulcasting in any way. As long as all parties who are affected by the interstate simulcasting process are in agreement with the terms of simulcasting, the program goes forth as before. Look no further than the horse industry for proof of this. Simulcasting—both interstate and intrastate—continues to take place, and in some cases even flourishes, while the Horse Racing Act is in effect.

Third, federal legislation does not interject Congress into the contractual/business relationships between tracks and greyhound groups, nor does it force tracks to negotiate the terms of the racing contracts with their kennels, as some track operators have contended. The lack of any negotiations (as discussed in Gary Guccione's report) is a problem kennel owners have grown accustomed to over the years, and if they wish to resolve it, they need to tackle it on the playing field of each individual state. All S. 22 does is require terms of interstate simulcast wagering be negotiated among all the parties involved, including the group representing the greyhound owners.

Congress' involvement in any negotiations—including those pertaining to interstate simulcasting—would actually be nil, requiring only that all groups involved negotiate the terms of greyhound simulcasting. The federal government sets no terms insofar as purses, number of races, etc. It only sets forth the guideline that the affected parties must negotiate the terms before interstate simulcasting can take place. Again, looking at the 1978 Horse Racing Act—Congress has not had to involve itself with the private negotiations within the horse industry.

Fourth, the 1991 Interstate Greyhound Racing Act does not encourage the expansion of gaming in states where citizens have not supported such sports (thereby causing law enforcement problems). This contention made by some track operators, is totally unfounded. To suggest that adding one more chair for greyhound owners at the simulcast negotiating table would lead to expansion and ensuing problems is illogical and preposterous. Nothing is preventing the expansion (in fact, uncontrollable expansion is possible) under the present guideline-less environment, except for the reservations of the individual states. The same would be true under S. 22.

Finally, S. 22 does not legalize off-track betting. Period.

Mr. Chairman, Members of the Committee—simulcasting as it's currently being conducted in greyhound racing boils down to a fairness issue. The present system in horse racing, which allows all parties with an interest in interstate simulcasting of horse races, including the horse owners, to negotiate the terms of how their racers will be used in the interstate simulcasting process, is a just and fair one—and has been deemed as such by Congress by virtue of the 1978 Interstate Horse Racing

Act. That greyhound owners are not afforded this very same privilege is a blatant inequity. That greyhound owners' proprietary interests are not respected nor protected at the present time when it comes to simulcasting is unfair.

To correct that unfairness, we ask that you support the passage of S. 22. Thank you.

Senator BREAUX. Thank you very much, Ms. Allen. I think Mr. Brosnan, we have a statement from you.

STATEMENT OF DAVID J. BROSNAN, CHAIRMAN, SIMULCASTING COMMITTEE, NATIONAL GREYHOUND ASSOCIATION, GLOUCESTER, MA

Mr. BROSNAN. Thank you, Mr. Chairman and members of the committee for allowing me to appear here this morning.

The issues that I would like to address are, what have we done so far as far as attempting to deal with this problem in the United States with the American Greyhound Track Owners Association.

Despite what some of the publications have printed, this was an issue when yourself, Senator Breaux and Representative Slattery filed this bill in 1989.

In 1988 we became aware that the simulcasting was taking place in the United States and that the owners of the greyhounds were not receiving purses. There was no payment whatsoever of greyhound races being sent from one State to the next, that was being done in the State of Arkansas.

We, the National Greyhound Association, went before the Arkansas Racing Commission and explained to them what was going on and the fact that in Arkansas, although they had perhaps the best dogs in the United States that were sitting on paper, they were simulcasting races into the State of Arkansas from Florida. Therefore, the people in Florida were not getting their purses and the people in West Memphis were being denied their share of the handle bet on the Wednesday races in West Memphis.

Consequently, we approached the American Greyhound Track Owners Association at liaison meetings that we hold, we have something called the Greyhound Council, and expressed to them our concerns about the simulcasting and our need to work together with them. We made no progress. And we approached them again when they came to Abilene at our national meeting. We have a semiannual meeting in Abilene. We again raised the question of the simulcasting that was now taking place in the United States.

Again, they told us they would not talk to us because of the expenses involved and that they felt it was an issue they did not want to discuss with us. We have consistently tried to open up a dialog and attempted to deal with the American Greyhound Track Owners Association on the simulcasting issue.

Subsequently, we did have the bill filed in 1989. It was filed by yourself, Senator Breaux and Mr. Slattery. We went to the American Greyhound Track Owners Association and asked them if we could sit down and talk about the bill and perhaps we could get a bill that we could pass together.

Just recently in June of this year, 1991, we had our first meeting that dealt strictly with simulcasting. And that took place at the request of the track owners at the host track of the president of the American Greyhound Track Owners Association at Biscayne, FL.

At that time we expressed to the track owners our need and desire to have a bill passed federally that would protect the greyhound owners in the United States. We asked them if there was anything within the bill that had been filed in the Congress that they found offensive and/or that we would be willing to negotiate about.

They listed three issues. No. 1, there was some language in there that gives an exclusion to tracks that have more than 250 dates. We told them that we would be willing to negotiate that.

At their suggestion, they wanted us to substitute the language that described who would do the negotiation for the greyhound people. They felt that because of the various groups throughout the United States, they did not want to have to deal with those groups, that they would rather deal with the National Greyhound Association. And they suggested and asked us to substitute the National Greyhound Association rather than the language presently in the bill.

The third point was regarding the purses. They asked us if we would consider to limit the amount of purse that we would be paid on a simulcast negotiation to an amount presently being paid in the States. We told them we felt that we could negotiate on that.

I can tell you this. We have gone back to our membership of the National Greyhound Association, board of directors, and we feel that we can negotiate all three of those points with the permission of Congress. We are willing to sit down and negotiate those three points.

They left it with us that they were going to bring that up to the board of directors meeting that they were having that afternoon in Miami.

To our chagrin, we found out later that they did not bring that up at that meeting. They seem to have a delaying tactic, to put it off. Now they want to discuss it in September or October. We have explained to them that with the explosion of simulcasting throughout the United States, it is almost critical to our membership and critical to our association to protect our owners to have this Federal bill and we are willing to negotiate.

The one issue that we have explained to the American Greyhound Track Owners Association is that we just want to be treated fairly and we want to be treated equitably. And we want to protect the membership of the National Greyhound Association so they receive their just and equitable moneys for the greyhounds that they are breeding and raising in the United States.

If there is any questions, I will be happy to answer them.

[The prepared statement of Mr. Brosnan follows:]

PREPARED STATEMENT OF DAVID J. BROSNAN

Mr. Chairman, Members of the Subcommittee, thank you for the opportunity to appear and to provide you with this testimony regarding S. 22, the 1991 Interstate Greyhound Racing Act.

I wish to briefly apprise you of the impact simulcasting has thus far had—and could have, in the future—on the sport of greyhound racing, insofar as greyhound owners are concerned. This, of course, has been carried out on a playing field void of any rules, such as those followed by our friends in the horse racing industry as a result of the legislation passed in 1978, the Interstate Horse Racing Act. Finally, I'd also like to briefly address the opposition to this bill voiced by the American

Greyhound Track Operators Association and the results thus far of good-faith efforts by NGA to negotiate with the AGTOA.

Simulcasting started out harmlessly enough in greyhound racing. In fact, in the beginning, it was a godsend to the sport in the state of Colorado. In the late 1970s, early 1980s, greyhound racing in Colorado had become somewhat stagnant, with a year-round circuit being conducted at four different tracks. Pari-mutuel handle and attendance figures were not increasing, and greyhound owners were struggling. Only in the summer was the sport closely accessible to the metropolitan population of Denver, consequently that was the only season when purses were lucrative.

A simulcasting program was adopted whereby races from any greyhound track in Colorado could be shown and wagered on at all other tracks in Colorado. Wisely, all the monies wagered went into the same pool, giving all the tracks sizable increases in parimutuel handle. Because all the monies wagered were lumped together, purses increased accordingly, thereby allowing greyhound owners to share in the bonanza of intrastate simulcasting. The gains made by everyone were equitable.

Then came the simulcasting of races into Las Vegas, first by Tucson Greyhound Park, then the Jacksonville, Fla., tracks. Tracks in Rhode Island, South Florida and Oregon were to soon follow, with a number of tracks today still simulcasting races into Nevada casinos. Disseminators are the "middle men" that make the arrangements with the track and the casinos to carry out the simulcasting. They represent the track before the Nevada Gaming Board, take care of various legal requirements, put together the racing program, etc. In most if not all instances, the disseminator pays the track a set fee for each performance. It's our understanding that the fees paid to the tracks by disseminators is modest. The disseminator receives a percentage of the amount wagered at the casinos on the simulcasts. Little or none of the funds derived is paid in purses—certainly not the same percentage of purse that's paid for on-track wagers. Nor is permission obtained from owners to simulcast races involving their greyhounds.

In the last several years; simulcasting became a hotter issue as other tracks explored its feasibility. Southland Greyhound Park in W. Memphis, Ark., which by law could not run live races on Wednesday afternoons, in 1988 began satelliting races that day from its sister tracks at Seminole, Fla., and Apache Junction, Ariz. The pari-mutuel pools were kept independent, and a lesser purse percentage (¾ of a percent at first, later upped to 1 percent) was paid in purses to the owners of the greyhounds putting on the show—a much smaller percentage than what was received at their respective tracks for on-site wagering. Further, the owners of greyhounds at Southland received no compensation, even though the new matinee performance on Wednesdays took away from the parimutuel handle on live racing on Wednesday nights, thereby actually reducing the purses to Southland greyhound owners. All of the simulcasting was conducted without any negotiations or explicit permission from greyhound owners at any of the tracks involved (Seminole, Apache or Southland).

For several years, races from the Lincoln Track in Rhode Island were simulcast into the two smaller tracks at South Dakota, one at Sodrac Park in Sioux City, the other at Black Hills Track in Rapid City. The pari-mutuel pools were kept independent of each other. By action of the State Racing Commission, 1.5 percent of the simulcast handle had to go to the kennels that raced at the South Dakota tracks (more than 3 percent went to purses from live racing). At Sodrac, the figure allocated was actually deducted from the kennels' meat bills with the track, while at Rapid City, the amount was paid in the form of a $1 lead-out fee (each time a kennel had an entry the track paid the kennel $1, regardless how the greyhound performed) with the balance being paid in one check at the end of the season. It's doubtful that any of the monies derived from simulcasting made its way into the pockets of the actual owners of the greyhounds.

As for the greyhounds at Lincoln—the ones putting on the simulcast show—Lincoln Greyhound Park advised NGA in 1989 that it would begin to pay a purse percentage to kennel operators (1 percent) of wagers placed via simulcasting at the South Dakota tracks. Prior to that Lincoln had charged $500 a performance from the Rapid City tracks to fink up, but in 1989 that was to have been changed to a percentage of the handle (4 percent), according to the Rapid City track's general manager. Kennel operators at Lincoln, however, have advised that weekly purse sheets have never indicated whether a purse from the simulcast races into South Dakota has ever been paid to the owners of the Lincoln greyhounds. As in all the other instances mentioned, no permission was ever sought from or given by the owners or kennel operators of the greyhounds at any of the tracks involved—Lincoln, Sodrac or the Black Hills. More recently, the Lincoln simulcasting has been replaced with simulcasting from South Florida ad nearby Iowa.

On numerous occasions, major stake races are simulcast to a variety of tracks around the country. The Kentucky Derby has even been simulcast into numerous a greyhound tracks while live racing has been going on. The stake purse is rarely, if ever, supplemented by simulcast revenues, though most receiving tracks will pay a percentage of the simulcast handle on the race into their the purses of greyhounds racing at their tracks. Nonetheless, in every instance this practice occurs without consultation with or permission from the greyhounds' owners at either the host or receiving tracks.

Statistics released by Gaming & Wagering Business Magazine show that off-track wagering on greyhound racing in 1989 was $28,571,564. Keep in mind that this figure does not include those jurisdictions that lump intrastate simulcast wagering into the same pari-mutuel pool (all, or nearly all of them,as best we can surmise), nor would it include the Nevada simulcasting into casinos. That may not seem like a significant amount, but consider that it represents a 73.63 percent increase in the figure from 1988.

Clearly the trend is toward more and more simulcasting in the future. At this time last year, the track in Council Bluffs, Iowa, and the two tracks in South Dakota announced that they had entered into a contractual agreement whereby races would be simulcast-interstate—from Iowa to the South Dakota tracks and their numerous satellites. Once again, it was done without permission of the greyhound owners. And once again, it was done without any regular purse money designated for the greyhounds that put on the simulcasting show. More than any year previously, 1991 has been the year of simulcasting in greyhound racing, with the current emphasis on simulcasting horse races into greyhound facilities. It has become especially rampant in Florida, but tracks throughout the country, including those in my own New England area, have begun relying on simulcast systems. Almost always it's done without consultation with the greyhound owners, and with no or little compensation. We're equally disturbed by what, on the surface, appears to be a small thing—that is, the simulcasting of one race per night from Portland into Tucson Greyhound Park. This clearly takes away starts from the kennel operators racing at the Tucson plant. Sadly—but not surprisingly, the greyhound owners had no say in arranging for this new simulcast system, and the Tucson kennel owners are not pleased with it.

What role will simulcasting play in greyhound racing in the future? It's the near-unanimous thinking of most racing officials and experts that the expansion of simulcasting is inevitable—and the events of the last two years bear this out. In recent months, there has been much talk about a possible multi-state simulcasting system of tracks-similar to what many states have gone to with the lottery—where all the moneys wagered would go into one pari-mutuel pool. It may be a terrific system, and it may even be beneficial to the sport. But greyhound owners should have a voice in this matter.

The new challenges that face greyhound racing today have in most cases already been encountered by the horse racing industry, and if that's the case with simulcasting—and we think it is—then we can brace ourselves for a torrent of new simulcasting situations in the sport of greyhound racing in the decade ahead.

If simulcasting were to ever get completely out of control, it could mean the closure of many racetracks. That may seem like an inconceivable notion, but consider the words of no less an authority that Lou Derteen, former general manager at Southland Greyhound Park, a veteran official in the greyhound industry and an officer for Delaware North, the sport's largest track owner. In the May 1989 issue of GREYHOUND UPDATE ad the April 1989 issue of The GREYHOUND REVIEW, Derteen said that the day may be coming (as early as the year 2000) when only eight major tracks would be in existence—two in each time zone—with simulcasting from these tracks replacing live racing at other facilities.

Even if that were to only partially come to pass, the effect on the industry would be devastating. Fewer tracks would mean fewer jobs, lost tax revenues and, of course, fewer greyhounds. Eight tracks (15 percent of what we have today) would spell a drastic decline in the demand for racing greyhounds and would absolutely devastate the greyhound breeding industry. This year, greyhound owners will spend about $95 million just to raise the greyhounds from birth to track-age and another $55 million to care for the greyhounds each year at the racetrack (based on $2,500 per greyhound to raise from birth to track age, and $5 per day for greyhounds at the racetrack). Simulcasting, if left unchecked, has the potential of decimating that industry and displacing tens of thousands of people who depend on greyhound racing for their income and livelihood.

Some—but not all—track operators pooh-pooh Lou Derteen's vision of two greyhound tracks in each time zone by the year 2000. Greyhound owners, however, listen to his prophecies much more seriously. The 73 percent increase in simulcasting

from 1988 to 1989 justifies that concern. How much expansion will there be by 1992? By 1995? If similar increases in growth are experienced the next couple of years then, to paraphrase Senator Dirksen, before long we'll be talking about a lot of money.

Regardless of the figure, the fact the practice of simulcasting has at least some impact on thousands of greyhound owners and breeders should be grounds enough for passage of S. 22. Two other points we ask that you consider: First—as has been pointed out before—S. 22 *will not increase the federal budget* or expand the federal bureaucracy. That being the case, then the amount presently wagered on simulcasting should be of little or no consequence. One's proprietary rights are being violated, whether it's for a million dollars or one dollar. Second, *the precedent of preserving the proprietary rights of horse owners in cases involving interstate simulcasting has already been set,* by virtue of the 1978 Horse Racing Act.

We agree with the opinion of most in the industry that simulcasting will grow by leaps and bounds in the years ahead. Despite all the growth we hear about in greyhound racing, most of the growth has been the result of expansion into new states or increases in racing dates. In most cases, the average daily attendance and handle has actually declined in the last few years. Increased competition for the entertainment dollar is one big reason for that decline.

As this trend continues, tracks will explore every possible alternative to revive those attendance and pari-mutuel figures, which most assuredly will encompass the practice of simulcasting. The gurus of racing encourage the adoption of simulcasting at every opportunity, to meet the growing competition for the entertainment dollar. As horse racing has shown, simulcasting is the wave of the future. If our sport follows horse racing insofar as trends are concerned (and it generally does), then horse racing's $11 billion wagered onsite, compared with its $2 billion off-site, will translate to a $3.2 billion/$58 million ratio in greyhound racing ($58 million being what would be wagered via simulcasting on greyhound racing). This is no paltry figure—and there's every indication, with the likely expansion of greyhound racing into new states, that the increase will be even greater.

Simulcasting is a serious concern to the greyhound owner ad breeder. In fact, in a 1989 poll taken by the National Greyhound Association of its 6,700 members—the NGA membership being the greyhound owners and breeders in this country—the issue cited as the most important of the upcoming decade was simulcasting. Based on what has gone on so far with simulcasting in greyhound racing, their concerns are well founded.

What has been done to remedy the problem within the industry? The National Greyhound Association, representing the owners and breeders, has met on numerous occasions with track operators to discuss concerns about simulcasting. NGA formulated a position highlighting two areas of greatest concern: 1) the fair and equitable sharing by all directly involved in racing, including the greyhound owners and breeders, of the benefits that are derived from simulcasting, and 2) the avoidance of any simulcasting that would threaten or curtail live greyhound racing in a particular area. To the frustration of owners and breeders, their pleas have fallen on deaf ears. With no federal or state guidelines on this matter, track operators have not felt the compelling need to do what's fair for all industry segments. Owners and breeders were thus left with no other recourse but to seek federal guidelines to protect their proprietary interests insofar as simulcasting is concerned.

So it was no surprise to see AGTOA take the position of opposing S. 22. We wish to respond to their five main objections to the bill at this time.

1. *The greyhound industry differs markedly from the horse racing industry.* Certainly our industries have some differences, but they're insignificant and irrelevant to the issue at hand (i.e., simulcasting). AGTOA says that greyhound racing does not face the same concern horse racing had with regard to simulcasting—that is, the fear that it would ruin the horse racing industry. Although simulcasting may not be a fear with some track operators in the industry, it certainly is a fear with greyhound owners ad breeders, as we have conveyed. And, as Mr. Joe Sullivan, owner ad operator of Kinsdale Greyhound Track, has pointed out in his letter (copy attached), it's also a concern among other track operators. Some of these track operators, including members of AGTOA, have informally and confidentially expressed their concerns about simulcasting's impact on the future of greyhound racing.

As for AGTOA's statements that simulcasting has saved tracks from closing—NGA has never disputed the potential benefits of simulcasting. Certainly it can help save some smaller tracks that are having financial problems. We also make it clear that we are not opposed to the principle of simulcasting. It is when simulcasting is conducted without the permission of the greyhound owners that the NGA must raise objections.

2. *The greyhound industry is prospering without any federal intervention.* We briefly touched upon this issue a few moments ago. The implication by AGTOA is that horse racing's growth has been stymied by federal intervention lie., the Interstate Horse Racing Act), while greyhound racing has flourished because there exists no such act for our sport. There really is no connection. Horse racing has shown little growth for three reasons (none of which is federal intervention): first, because it's been in most states for a number of years, with little room for expansion into new jurisdictions; second, because of the fierce and growing competition for the entertainment dollar that is causing stagnation or even a loss in daily average attendance and pari-mutuel handle figures, and third, because the cost of operating a horse track is much greater than operating a greyhound track, thus further limiting expansion into areas other than major markets.

A closer look at greyhound racing's growth indicates it to largely be the result of expansion into new states (thus, horizontal growth rather than vertical). In the last 20 years, the number of states with greyhound racing has increased from 7 to 18 ad the number of tracks has risen from 36 to 56. So the impressive growth figures you see on greyhound racing are the result of an increasing number of tracks in a increasing number of states-as well as an increase in the number of racing dates at already existing tracks. It's noteworthy that a greyhound track can sustain itself in a city the size of Wichita, Kansas, or Wheeling, West Virginia, while horse racing cannot—another reason we've seen more greyhound tracks built than horse tracks in recent years. In reality, greyhound tracks that have been in existence for more than five years are experiencing the exact same concerns as horse tracks: stagnant attendance and pari-mutuel handle statistics, due to the increasing competition for the entertainment dollar.

What's most important to remember here is that none of the major fluctuations in growth in either sport—horse or greyhound racing—has to do with government intervention or non-intervention. After all. the Interstate Horse Racing Act is not really intervention: it only sets up parameters whereby all groups involved must agree on the terms of interstate simulcasting. In no way does it establish the terms of the simulcasting or interfere with the state's rights to offer the type and amount of wagering it wishes. S. 22 would do exactly the same thing.

3. *S. 22 would operate like a "private relief" bill for greyhound dog owners.* Track operators will frequently refer to the negotiations and bargaining that goes on between the tracks and the greyhound owners. *In reality, no such negotiating or bargaining exists.* Contracts are offered by tracks to kennels on a take-it-or-leave-it basis. Nor are we urging Congress to intervene in these 'negotiations". But when the situation arises that involves the simulcasting of races across state lines without the permission of the owners, then Congress should at least establish guidelines whereby all the parties affected have a chair at the negotiating table. The precedent on this has been established through the 1978 Interstate Horse Racing Act.

The tracks assert they are not "heartless profiteers" or "robberbarrons", therefore government intervention is not necessary. Although some may argue about the benevolence of greyhound track operators, this is not the question at hand. The real issue is whether greyhound owners have the right to negotiate the terms of interstate simulcasting if it involves their greyhounds. Clearly the Interstate Horse Racing Act indicates Congress feels the owners of racing animals used for pari-mutuel wagering should have that privilege. So do greyhound owners.

4. *S. 22 would create new possibilities for federal litigation at a time when the court system is already burdened.* This is simply not true. In the 13-year period that the Interstate Horse Racing Act has been in effect, only *one case* involving the act has been brought before the federal courts. One case in 13 years can hardly be viewed as an additional burden on the courts.

5. *S. 22 inappropriately involves the federal government in what has traditionally been considered a province of the states.* By all means, the states have regulated—and should continue to regulate—the types and quantity of wagering in their respective states. S. 22 does not interfere with that privilege in any way.

Furthermore states should—and would, even under S. 22—have the right to determine simulcasting programs within their own state boundaries.

George Johnson, executive director of the AGTOA, in an address at the Racetrack Industry Symposium in Tucson in December 1990, stated that greyhound simulcasting was not an issue until Oct. 6,1989, when Senator John Breaux and Congressman Jim Slattery first introduced the Interstate Greyhound Racing Act. Yet long before that date, NGA had tried to convey to AGTOA that this was indeed a serious issue. At the AGTOA Conference in March 1988, we pleaded with AGTOA to address our concerns and enter into discussions. Our pleas fell on deaf ears, leaving NGA with the sole option of pursuing the matter legislatively.

Only now, in the spring of this year, has AGTOA made any overture toward entering into negotiations on the simulcasting issue. In good faith, NGA agreed to meet with AGTOA to see if a resolution could be reached—with the understanding that our legislative thrust would not diminish during any negotiation process. A meeting was held on AGTOA's terms and on their turf, on June 29, 1991, at the AGTOA president's track, Biscayne Kennel Club. At that meeting, NGA advised that it was committed to a simulcasting bill, and that it was solidly behind the Interstate Greyhound Racing Act. NGA also advised that it was willing to discuss and work with AGTOA on any points of the bill with which the track operators may have a problem.

In that meeting, three major areas of concern were raised by AGTOA NGA responded to all three of those concerns with a willingness to jointly propose amending some of the legislative language to ease AGTOA's concerns. Immediately after the meeting, the NGA Simulcasting Committee was polled and was unanimously in agreement with the proposals, only leaving action by the NGA Board of Directors—which could occur in a two-week period—to finalize such an agreement, at least from NGA's standpoint. Meanwhile, AGTOA's board of directors, which met immediately after the negotiations on June 29, failed to take any action on the very concerns raised by its representatives in the NGA/AGTOA negotiating meeting. At this juncture, we have not been apprised by AGTOA of any effort to poll their membership or to take similar, timely action on these matters, short of waiting for their membership meeting this fall. AGTOA's continual requests to have NGA slow down the legislative process and its lending lip service toward negotiations—yet, AGTOA's passive attitude toward the very matters its own people raised at that June 29 meeting—lead NGA to regrettably question whether AGTOA's suggestion to negotiate was merely an attempt to forestall legislation and whether their intention to negotiate in good faith has changed at all since 1988. We hope that's not true, and we want it clearly known that NGA remains willing to discuss and negotiate the simulcasting issue with AGTOA at any time and in any place. However, it must also be clear that until a final settlement is reached—and to NGA's way of thinking, that means within the parameters of federal legislation—and our respective associations can walk into Washington hand in hand with an agreement, that NGA's support for the Interstate Greyhound Racing Act is resolute.

The issue here is not a wagering or gaming issue within a state's own jurisdiction, but rather, *a fairness issue,* as it pertains to simulcasting across state lines (interstate). As for tradition—the 1978 Interstate Horse Racing Act is the standard that was set by Congress 13 years ago; we only ask that it be extended equally to all, including greyhound owners.

We respect the views of the Commission on the Review of the National Policy Toward Gambling, when it stated in 1976 that the federal government should be reluctant to interfere with state gambling policies. But S. 22 is not a gambling bill: it does not encourage or discourage a state from offering whatever type of gambling it wishes to have, nor how much it should offer. Those are strictly state issues. S. 22 is a fairness bill. It does not interfere with a state's gambling policies.

In conclusion, we ask that greyhound owners be afforded the same fairness and equity already granted to the owners and breeders of race horses. This can be accomplished through passage of the Interstate Greyhound Racing Act.

Thank you.

Senator BREAUX. Thank you, Mr. Brosnan.

I note that that is a vote that has just been announced.

Does anyone else have a statement or are you just here to answer questions?

We will adjourn and come right back and start with questions.

[A brief recess was taken.]

Senator BREAUX. The committee will please come back to order.

We had completed the statements of our witnesses and will now proceed to questions and thank them for being with us.

Let me ask, I guess, Mr. Guccione the first question. Why do we need to be here in Washington, DC, trying to resolve this problem? Two questions. Why is an agreement not possible between the track owners and the dog owners? Or why is not possible to get the States, which of course regulate racing within their State, to in fact solve this problem at the State level?

I think I know the answer, but I think the record needs to have that presented.

Mr. GUCCIONE. We always hold out hopes, Senator, that perhaps we can negotiate or work something out.

And as Mr. Brosnan mentioned, we met with AGTOA recently. Our door is always open. And we are always willing to listen and to try to negotiate that out.

It was discouraging from that first meeting. Not so much the meeting, but what seemed to follow that meeting as far as trying to reach an agreement. But all of the points that were raised, we tried to address. We are as agreeable with them as we could possibly be. We thought perhaps there was some hope there. We still hold out whatever hope is worth holding out toward that end. We would like to see that done.

We would like to see it done within the parameters of a Federal bill. That did not seem to be a problem with the AGTOA at that particular meeting. And we got down to the nitty-gritty of the points that Mr. Brosnan raised.

As far as the States regulating that, it is true that the States do regulate in many cases, not all cases, the purse and the purse percentage on the live races that are going on in those States. But they have done nothing as far as addressing the purse percentages for the simulcasting.

Senator BREAUX. I would question whether they have jurisdiction to regulate anything that is interstate commerce. I do not think they would really have the authority to do it within the State. And I guess that is why you are suggesting that is has to be done on the Federal level.

Mr. GUCCIONE. Yes.

Senator BREAUX. There is nothing in this bill, as I understand it, in our legislation that in any way affects the operations of a track within a State, in other words, the amount of money or revenues that a dog owner would get from the track from racing at that track.

Or it does not in any way approve racing in any State that has made a decision not to have dog racing. I know in my State of Louisiana, dog racing is illegal. This legislation in any way does not affect any of that, as I understand it. Does it?

Mr. GUCCIONE. That is true. In fact, the booking system that I covered in my presentation as far as the tracks dealing with the kennel operators for their private contracts to race there, those would still be the way they are being conducted right now. None of that would change. This would not affect that at all. All this would deal with would be the simulcasting.

Senator BREAUX. And if a track simulcasts a race within the same State, this legislation again would not affect intrastate telecasting of races. Would it?

Mr. GUCCIONE. That is correct.

Senator BREAUX. And the legislation, specifically, I guarantee you we tracked, in drafting the legislation, is identical to the horseracing solution that was reached in 1978. Basically we are only substituting greyhound racing for horseracing to make sure that we are trying to follow the same pattern.

But specifically the legislation gives you the relief that you are seeking. Page 6 of the legislation, I guess, is what does it when we talk about, an interstate offtrack wager may be accepted by an offtrack betting system only if consent is obtained from the host racing association except that as a condition precedent to such consent, the racing association must have a written agreement with the greyhound owners group under which the racing association may give such consent.

Is that really the guts of it, by requiring a written agreement between the track and the dog owners? Is that what you are seeking as the relief, essentially?

Mr. GUCCIONE. Yes. That is the key point of the legislation.

Senator BREAUX. That requirement in the Federal legislation that you have a written agreement in no way says what percentages or talks in any details about the type of agreement that you have, just that you have to have an agreement and have negotiation.

Mr. GUCCIONE. That is true.

Senator BREAUX. Let me ask a few questions that the next panel who is in opposition is going to raise in their testimony and see if you have any comments about them that you could help us with.

They raise six points in opposition to the legislation. They say, first, it is not the same thing as the Inter-State Horse Racing Act because they are different. Obviously, we know they are different.

But is there a difference between the arrangements? Or what is the difference? How would you answer that?

They say you cannot use the same type of legislation as you used for horseracing because dog racing is different.

Mr. GUCCIONE. Senator, in most ways there are many similarities. They are racing animals that the general public is wagering on, and from the parimutuel pool come the moneys to generate purses and expenses, so there are many similarities between the industries as far as that is concerned.

The biggest difference is probably what I outlined earlier, and that is the booking or the contract system. It is different in horseracing in that an individual can, if he has a horse good enough, go in and race at a particular track. That cannot be done in greyhound racing. You need a contract as a kennel to get in there.

What the difference does is makes our sport all the most susceptible to problems. It makes it more possible for the tracks to basically run over the greyhound owners in carrying out the simulcasting they wish to carry out.

Senator BREAUX. They make the point that with horse tracks the horse owner deals with the track, but that with a dog situation it is not necessarily the dog owner, but the dog owner who leases his animals to a kennel operator who in turn deals with the track. And yet legislation talks about the owners and the track having an agreement. Can you all comment on—is that a problem or how do we address that or comment on that?

Mr. GUCCIONE. Yes, if I could defer to Mr. Brosnan.

Mr. BROSNAN. Senator, I think part of problem in understanding that is the fact that if you substitute the word "trainer" for "kennel operator" and the owners would stay the same, but our kennel operators basically would be considered the trainer at a race track.

So, when they negotiate with the horse people through the HBPA, it is generally with the trainers and the owners.

But the confusing issue that you have here is our use of the word "kennel operator." The kennel operator actually runs the stable or what have you, and the owners actually own. The owners would be the same but the difference would be—well, we do have trainers. The trainers work for the kennel operator. The kennel operator is actually the head of that particular kennel at that race track, and that is a big difference right there.

Senator BREAUX. So, your point is that it is appropriate to have the track owners negotiate with the dog owner.

Mr. BROSNAN. Exactly the way they do with the HBPA. The HBPA sits down at the beginning of the year and more or less negotiates a contract that will cover horseracing throughout the United States.

Senator BREAUX. The other points they make, No. 2, is that the industry is stable. I guess that depends from whose perspective it is stable. I guess maybe on one side it is, and your perspective is that it is not stable.

And the third point they make is that the States already regulate the distribution of the purse in greyhound racing. We are not affecting that at all. We are not affecting the purse at a track within a State. We are only talking about any revenues that are derived to the track as a result of an interstate transaction, which in this case is the simulcast.

The fourth point is that they say interstate simulcasting accounts for less than 1 percent of all the money and that it is such a minor thing we really should not be involved in Federal legislation. Do you have a comment on that?

Mr. GUCCIONE. Well, Senator, by their own words in their report, it is a $164 million and growing. At what point does it become significant?

Senator BREAUX. What report is that?

Mr. GUCCIONE. I think the AGTOA's own figures indicate a $164 million wagered last year through offtrack betting or through simulcasting. That is a significant figure, and it is continuing to grow.

Senator BREAUX. That is not necessarily the revenues to the track. You are talking about the amount of wagering as a result of simulcast. That is not necessarily revenues to a track?

Mr. GUCCIONE. You are right. That is the amount wagered.

Senator BREAUX. Of course, the point is whether it is $1 or whether it is $1 million, it is a question of something of value. The question of how much it is should not be the determining factor.

The fifth point was that there was no national problem with the greyhound industry that needs fixing. It is a private interest bill, and it would place the Government in a position of furthering the interest of dog owners in general and the NGA in particular. What are your comments about that?

Mr. GUCCIONE. Well, Senator, we consider it a fairness issue and not an issue for relief as Ms. Allen said. We feel that it is our right as the owners of the greyhound to be able to negotiate how our animal would be used, and if it is being used for simulcasting to be involved in the fate of that.

Senator BREAUX. The final point they make is they would burden our Federal courts by providing access, automatic access to the Federal district court at a time when the court is overwhelmed. Well, I understand that statement and appreciate it. I do not think it is a sufficient reason not to have a Federal law if in fact there is a need for it.

Those are the points I wanted to make. We want and try to be helpful. We do not have, like I said, a single dog track in Louisiana. It is not legal in Louisiana, but it is a question that comes under the jurisdiction of the Commerce Committee. It is interstate commerce, and it is something of value and States cannot regulate interstate commerce. It is something that lies in the responsibilities of the Congress and not the States.

Thank you, and I would recognize Senator Kasten our colleague for any questions he might have.

OPENING STATEMENT OF SENATOR KASTEN

Senator KASTEN. Mr. Chairman, thank you. The legislation that we are looking into today, S. 22, would regulate the manner in which interstate betting on simulcast greyhound races from out-of-state tracks could occur.

We held a hearing on this same bill last October in the 101st Congress. I think some of today's witnesses are the same, actually. But, evidently, this continues to be a controversial subject.

I have received no constituent complaints concerning offtrack simulcast wagering in Wisconsin. We have greyhound tracks now in Wisconsin. I am assuming that we have—maybe you all can tell me if we have kennel operators in Wisconsin also. We probably have a few, since we have these tracks. But this evidently has not become an issue in Wisconsin.

But I look forward to today's testimony, not only from all of you, but from the later witnesses as I am not clear, as I was not clear last year, about the role that the Federal Government should to play here. It is regulated now on an intrastate basis.

Evidently, there is a considerable difference of opinion within the industry. The industry is growing dramatically, having grown 190 percent from 1978 to 1988, and as I understand it, less than 1 percent of the amounts wagered in the industry are in this overall simulcasting area. That is something else I want to ask you about.

Greyhound racing is becoming a valuable resource for Wisconsin. We have five tracks now in operation. The first payments to owners of winning dogs is 4.5 percent. I am told that that is on the higher end of the scale for the payments that owners of winning dogs receive. But it just seems to me as it did last year that this is an area that is ripe for negotiated settlement among the parties.

And, Mr. Brosnan, one of the things I want to try to ask you, if I understood what you were saying, is that you thought you were in the process of negotiating and then the negotiations fell through. I want to touch on that when I begin my questions.

But it seems to me that this is something that the industry should work out itself and that we ought not to be imposing a Federal law on the industry. But I am pleased we are continuing our overall study into this issue.

Let me begin with you, Mr. Brosnan, I understood you to say that you were in the process of negotiating with different track owners. You referred to them as, you know, "they." They said that they would agree to this and that, if I remember correctly, and you went to Miami and they then changed their position. Who is "they," specifically by name? Is "they" the people that are going to be testifying here?

Mr. BROSNAN. When I refer to "they," Senator——

Senator KASTEN. I mean, who are the track owners—do they have an association, first of all?

Mr. BROSNAN. Yes, sir.

Senator KASTEN. I cannot find the names in front of me.

Mr. BROSNAN. I thought I made it clear it was the AGTOA, which would stand for the American Greyhound Track Owners' Association.

Senator KASTEN. All right, and we are going to have a general counsel, or Washington counsel, for that group appearing in the next panel.

Now, were you officially negotiating on behalf of your simulcasting committee at the National Greyhound Association, with a representative of the American Greyhound Track Owners Association and if so, who was that person?

Mr. BROSNAN. We met in Miami with the people who were representing the AGTOA. Who we met with was, No. 1, the president of the AGTOA, who was Kay Spitzer; the owner of the track that we met at, which is in Biscayne, FL; George Johnson, who is the executive director, a paid position for the track owners, who is based in Miami, was also present, those who came late into the meeting was Mr. Boese, who is seated in the audience today, representing Lincoln Greyhound Track; the general manager of West Memphis was also there; and the general manager of Multnomah in Oregon, a Mike Doral.

Originally, when we did this by correspondence, we were led to believe that there would be other people there, and we were kind of taken aback by—the people we expected to meet with via the original correspondence, when we went into Miami were not there. But yes, it was a negotiation.

Senator KASTEN. You were speaking in an official capacity for your organization, and you understood them to be speaking in an official capacity for their organization?

Mr. BROSNAN. Yes, sir, I did.

Senator KASTEN. Explain. You said you came to tentative agreements and then what happened?

Mr. BROSNAN. We asked them what they found that was in the Federal legislation that they did not like, and they brought up the three points. They emphasized those three points.

What gave me the feeling that we did not think they were operating in good faith, when we left there, we knew that they had a board of directors meeting of the AGTOA later that afternoon at Biscayne.

When we talked to them later that evening, we were quite taken aback by the fact that the issue was not even raised at their board meeting that afternoon, because when we left we thought that they

were going to approach it and we were going to set up a meeting later.

Consequently, we have received letters from them indicating that they would like to get together again but they would want to do it maybe on the telephone; they did not want a live meeting. They would rather do it by a telephone communications or something.

I left there, and consequently I have a distinct feeling that they are really not negotiating in the area of trying to negotiate this out. I truly believe what they are trying to do is stall us here in the Congress of the United States.

Senator KASTEN. Well, to me it seems clear. I did not have anything to do with the horseracing legislation and I do not know even when it passed—in 1978—but that passed because a group of people came to Congress and said this is an agreed-to bill, if you will; this is something that we all worked with, and therefore it passed.

I think unless and until there is at least more of a meeting of the minds among all the different groups involved here, it is unlikely that any legislation would pass. I will ask the same questions of the next panel this is something that, it seems to me, should not be here; it should be at that meeting in Miami or wherever you had that meeting, and you all should work it out amongst yourselves.

That is what I would hope. Now maybe in the process of these hearings you will come closer to working it out amongst yourselves.

I need to understand also the difference between the kennels and the—what is your association's name—the National Greyhound Association. Are all kennels part of the National Greyhound Association, or is there a group of, for lack of a better word, nonmember kennels or is there another association of kennels and then you have a greyhound association which has some of the other kennels? And do you represent owners or kennels?

I do not understand the compartments here. Anyone can answer that question.

Mr. GUCCIONE. The National Greyhound Association is an association of the owners and breeders. There are about 6,700 of us from around the country. It includes, in almost all cases, the kennel operators because most of them also own some greyhounds; therefore, they are members of the association.

There is no national kennel association as such. There are some local kennel groups or associations at some of the tracks.

Senator KASTEN. You are speaking, then, today for both owners and kennels?

Mr. GUCCIONE. We are speaking on behalf of our whole membership, which would include, like I said, most of the kennel operators from around the United States.

Senator KASTEN. Are there people who are not owners and only kennel operators?

Mr. GUCCIONE. Very few.

Senator KASTEN. But they are also part of your group?

Mr. GUCCIONE. Well, if they did not have to register a greyhound as an owner, they would not have to be registered with the association as a member. And there are a few, but very, very few.

Senator KASTEN. Now, the concept here is we should treat the dog industry the same as the horseracing industry, generally speaking. Is that correct?

Mr. GUCCIONE. That is the basis of our bill, following the Horse Racing Act, yes.

Senator KASTEN. Now, in section 5 of the bill, which is, I understand, identical to the Horse Act—after obtaining the consent of the host racing association—and that requires an agreement with the owners group or the kennel group, I guess—the racing commission, the offtrack racing commission—why does that section also require, and I am thinking of Wisconsin now, that you check with neighboring tracks as well?

If I understand the legislation, it says that you have to check with tracks within a 60-mile area. Specifically, why did you pick 60, not 50 or 100 or 200? What is magic about 60 miles?

Mr. GUCCIONE. Simply because that was what was in the 1978 Interstate Horse Racing Act and seemed to have worked for 13 years with them.

Senator KASTEN. OK. Then the next question is if there is no one within 60 miles, you have to check with the next closest operating track, even if it is in an adjoining State. So, I have a track, let us say, in the Fox River Valley in Wisconsin, and Wisconsin Dells is another track that we have in Wisconsin. Now, they would, if I understand your legislation, the next closest could be Dubuque, IA—they would have to check with Dubuque, IA in order to simulcast?

Explain to me why. You could argue—I do not know what the situation is in other places—but it seems to me you could end up having the next closest be hundreds of miles away. Why would a track hundreds of miles away in effect have a veto decision over what might happen in Fox Valley or Wisconsin Dells?

Mr. GUCCIONE. Again, the language was basically taken from the Horse Racing Act, patterned after it. Our understanding was that that act had been very workable with the horseracing industry; therefore, we followed it to the tee. But, as we had mentioned to AGTOA, if there are concerns or problems or ways that things might be improved with the bill, we are certainly agreeable to talking and discussing those out, as we did with AGTOA on June 29.

Senator BREAUX. Would the Senator yield just for a point? Bear in mind we are not talking about the tracks; this section deals with offtrack betting offices, which is an offtrack operation just for betting. It is just the offtrack betting office.

And the reason, I would imagine, is to not be taking action away from a track that the offtrack betting office is located nearby and put them out of business. I imagine that is why it is here. It does not deal with the track or the horses or dog owners.

Senator KASTEN. But I am just suggesting that there could be a long way between whether it is a track or a betting office, and it does not make sense to me to have a decision in Dubuque, IA, affect what happens in Baribou, WI. That is the point I am making.

What you are saying is, it does not necessarily make sense to you either, but that you just tracked it from previous legislation.

Mr. GUCCIONE. Well, I think I understand that again our bill is patterned after that bill and it has worked so well. The horse bill

has not been amended in all of those years to correct that, any problem that that particular language may have created.

Senator KASTEN. All right. Let me submit a couple of other questions for the record. I just want to repeat that I think this is an area in which the parties need to come closer together before we can be in a position of in effect putting a national regulatory group together.

It seems to me that if there is some agreement that could be reached—and it may be along the guidelines of the Horse Act—then we are in a position to act. But I think it is very difficult, with all these differences of opinion, for us to reach a consensus in this area.

Thank you, Mr. Chairman.

Senator BREAUX. I thank the Senator. My only point would be that I would normally agree, that if all sides dealt from the same level of equality of position, this might be a different situation. Right now it seems to me you have two parties who have a problem, and one party is holding all the cards, because right now there is absolutely no requirement that a track owner negotiate or even meet with the people who own and run the dogs who are racing on that track with regard to any benefits from a simulcast transmission.

There is no requirement whatsoever. If I was in that position, I would probably take the position that I am not going to talk to you. I do not have to. Under those circumstances, you will probably never get an agreement between the two parties because indeed one of them deals from a position of strength that the other one does not have.

Let me ask a question. I understand the legislation does not solve the problem for you in the sense of coming up with any kind of an agreement. It just says that there should be an agreement. That is going to require negotiation. That is going to require you all to sit and talk about terms and conditions dealing with the simulcast transmission of this product.

But it does not guarantee what those terms or conditions are going to, or might be—if you get 1 or 10 percent or a percentage. It does not require any type of terms of an agreement; it only requires that there be negotiations and a written agreement be arrived at. Is that your understanding?

Mr. GUCCIONE. That is true.

Senator BREAUX. I note that our good friend, Senator Burns, has just arrived. We are glad that he is here.

We will excuse this panel. We do have some questions we would maybe like to submit to you to respond that may come up later. Thank you for your answers and your participation very much.

Let me welcome up the second panel now, which consists of Ms. Deborah Kelly, who is Washington counsel for the American Greyhound Track Owners Association; and also Mr. James Boese—I was going to pronounce it Boi-say, but that would be from Louisiana—Mr. James Boese, vice president and general manager of the Lincoln Greyhound Park in Rhode Island.

We are pleased to have both of you and look forward to your testimony. Any particular order. It does not matter to us. Ms. Kelly, we have you listed first, if you would like to go.

STATEMENT OF DEBORAH P. KELLY, WASHINGTON COUNSEL, AMERICAN GREYHOUND TRACK OWNERS ASSOCIATION, WASHINGTON, DC

Ms. KELLY. Good morning, Mr. Chairman and Senators. My name is Deborah Kelly and I am Washington counsel for the American Greyhound Track Owners Association. I am delighted to appear before the committee today and I would ask that the written remarks that have been previously submitted to your committee be entered into the record in their entirety, and for the sake of your busy schedules I will summarize the most salient points on behalf of the AGTOA.

This morning you have heard a lot of information suggesting that because the Horse Racing Act works well for the horses, if we substitute the word "greyhound owner" for "horse owner" what we get is a bill that works well for the greyhounds. The position of the AGTOA is that it is not at all clear that the Horse Racing Act works well for the horses but it is absolutely clear that the horse bill as applied to the greyhounds would not work at all.

The Horse Racing Act was written 13 years ago by another industry, for another industry, at another time, for an entirely different set of problems. The horse bill brought together all factions of the industry, who united due to their common fear of the specter of OTB that seemed to be looming, and they were afraid could wipe out live horseracing.

That industry got together and among itself worked out a bill which it then brought to the Congress and asked the Congress to enact into law.

In contrast, the greyhound industry is, as our panels today indicate, not at all united over this bill; in fact, it is quite divided. The Horse Act was passed with the consent and indeed with the writing of the horse industry. The greyhound bill in contrast would be imposed on the greyhound industry against the strenuous objections of at least one-half the participants in that industry.

Furthermore, the Horse Act was not passed to give the horse owners a better deal at the bargaining table. The purpose of the greyhound bill is just that—to give the greyhound owners a better deal at the bargaining table. The purposes, the circumstances, and indeed the unanimity in the horse bill versus the divisiveness in the greyhound bill show that you cannot just transpose one on the other.

Furthermore, there are differences as to who is involved in the contracts which make the horse bill not appropriate for the greyhounds. We heard some discussion this morning from the NGA panel which would suggest that the track operators are not unlike Darth Vadar in their efforts to shut out all dog owners from any part of simulcasting. I have a real track operator who will appear before you today and I do not think fits that description. He will testify about the negotiations that do in fact go on and the private contracts that are in fact signed in many States whereby the greyhound owners are given a share of the proceeds of simulcasts.

This is done without the involvement of the Federal Government and it is done without the exclusive bargaining unit of the NGA to prod the track owners to sign such agreements.

The difference between the greyhound industry and the horse industry which makes this particular bill not fit is that the track operators deal with the kennels, not dog owners. The dog owners lease or sell their dogs to the kennel operators, and it is the kennel operators who are the people in the trenches each day, who do the day-to-day running and working with the track operators.

There are local kennel associations at tracks with whom the track operators deal. The effect of this bill would be to take out the kennel operators, who are now those people in contact with the tracks, replace them with breeders—that is, the NGA—and substitute these local kennel associations with the National Greyhound Association.

I think nowhere are the differences between the horse bill and the greyhound bill better highlighted as to the poor fit than the aspect of it that Senator Kasten raised. That is the very elaborate provision of the horse bill that deals with market consents, 250-day racing requirements, and 60-mile radiuses. It is a very dense portion of the bill that arguably makes tax law seem like an easy read.

But the upshot of it is that it would in many instances cause tracks and OTB offices to look outside their own shores, outside the State, to get permission. The effect is completely unknown because, as the NGA panel admitted, this bill is in there because it was tailored to the horse industry. We have absolutely no idea what the effect of those particular 250 days and 60-mile radiuses would be when applied to the greyhound industry.

It is a wild card within the bill that could threaten to wreak havoc on simulcasting, yet simulcasting is something that NGA has told you they support.

Our main point is that the horse bill, as applied to our greyhound industry, would not work. But it is also important to note that there is nothing of national import within the greyhound industry that needs to be fixed. In my written statement that was provided, we provide ample evidence of just how the greyhound industry is flourishing, and as dog owners are a part of the greyhound industry they share in the proceeds of that healthy industry.

We are already regulated or overseen by various States and racing commissions. Private contracts between greyhound owners groups and track operators have been reached in Wisconsin, Colorado, Rhode Island, South Dakota. AGTOA continues to hope, as apparently does the NGA, that private negotiations, private discussions between the two groups will be productive, and that whatever problems exist can be resolved through private negotiations, as are the problems in most industries, first tried to be resolved within the industry before the industry comes to Congress for help.

My third point is that there has been a figure that has been discussed both last year and before the committee today that is a bit misleading. The figure of $164 million that gets mentioned does not deal with interstate simulcasting. The scope of this bill is solely interstate simulcasting, and interstate simulcasting encompasses, at best, $32 million a year.

I understand Senator Breaux's comment that regardless of the money this is something that you are focusing on, but I would like to let the committee know that in fact this is an infinitely lesser

amount than some of you may be under the impression that you are dealing with, because much simulcasting is intrastate.

For example, the State of Colorado, on its own, is responsible for 130 million dollars' worth of simulcasting. It never leaves the State of Colorado and so would be beyond the scope of this bill.

My final point is that we cannot assume that because the Horse Racing Act did not create litigation in the Federal courts, if the greyhound act were passed it also would not create litigation. First of all, the horse bill was consensual, so the odds for it being contentious in the Federal courts were much more slim. The greyhound bill is very contentious, and therefore the odds of it popping up in Federal court are much greater.

Also, this bill provides access to Federal district courts regardless of the amount of the wager. So, conceivably a $5 wager could get you the access to walk into a Federal district court.

I think it is also important to note that the horse bill may have been a sleeper issue in the courts for many years, but it is no longer. Since the horse bill is being just applied wholesale to the greyhound industry, I would like to bring to your attention that recently litigation has been triggered in the Federal courts precisely over the veto power and the competition between bargaining units that the horse bill has given rise to.

To be brief yet specific, in January of this year the National Horsemen's Benevolent and Protective Association held its annual convention in New Orleans and passed a resolution saying that no horsemen's group that belonged to its organization should consent to any simulcasting unless the track receiving the simulcast had live racing.

A track in Birmingham, AL, had fallen upon hard times and could no longer afford live racing. In keeping with this resolution the California horsemen's group—HBPA—and the Florida horsemen's group—HBPA—passed this resolution and both withheld consent, virtually boycotting the Birmingham track.

This case went to Federal district court in Tampa, FL, where there was a finding of a per se violation of the Sherman Antitrust Act. A preliminary injunction was issued, and it was held that the horsemen's group was engaged in restraint of trade by using the Horse Racing Act to conspire together to withhold consent from the track.

In conclusion, I would say that if the circumstances which led to the passage of the Horse Racing Act no longer exist, if the effect of the Horse Act has not been studied and indeed may be negative, if the greyhound industry is doing well, and if State cooperation is widespread, there is no reason for this bill.

In fact, there is a reason not to go further with this bill, because in the face of so much unknown effect there is a real danger that this bill would create the very instability within the greyhound industry that it purports to correct.

Thank you for you time.

[The prepared statement of Ms. Kelly follows:]

PREPARED STATEMENT OF DEBORAH P. KELLY

On behalf of the American Greyhound Track Operators Association ("AGTOA"), we are pleased to appear before you today to discuss S. 22, the "Interstate Greyhound Racing Act of 1991."

AGTOA is the only national organization representing greyhound tracks in the United States. Formed in 1946, AGTOA represents 49 tracks located throughout the United States. Membership is open to all lawfully licensed tracks whether they are owned by individuals, partnerships or corporations.

Greyhound racing is the sixth largest spectator sport in the United States. Greyhound racing is legal in 19 states and tracks operate in IS states. In 1990, more than 29.4 million people attended greyhound races. The industry provides jobs for over 100,000 people annually. In 1990, greyhound racing contributed more than $227 million dollars to the general funds of the States, not including payroll, sales and other taxes. All our tracks are fully regulated by state or county government racing commissions which oversee performance and all aspects of racing and wagering activities.

SUMMARY

The Interstate Greyhound Racing Act of 1991 ("IGRA") would regulate wagers placed in one state on races in another state. This off-track betting ("OTB") often takes the form of electronic simulcasting. The crux of IGRA is that it creates a federal requirement as to whose consent must be obtained in order for an interstate simulcast to occur. Under the statute, consent from the host track, host racing commission and off-track racing commission must be obtained. However, the key element, and indeed, the purpose of this bill, is Sect. 5(a)(1)(a), which provides that before the host track may consent, it must first obtain the consent of the "greyhound owner's group". Any person who accepts an off-track wager without first obtaining all these consents is civilly liable for damages to the host racing association, host state, and the greyhound owner's groups, no matter how minor the wager.

Mr. Chairman, AGTOA opposes the passage of S. 22 for six central reasons. First, contrary to what supporters of this bill would have you believe, this is not simply the interstate Horse Racing Act of 1978 (P.L. 95-515) applied to the greyhound industry. Our industry differs markedly from the horse racing industry, and therefore the analogies between the 1978 interstate Horse Racing Act and the proposed interstate Greyhound Racing Act are mistaken. Second, the greyhound industry does not need to be stabilized. It is quite stable and needs no federal intervention. Third, the states already regulate and monitor the distribution of "the purse" in greyhound racing. IGRA would violate the traditional view, and indeed the finding of the National Commission on Gaming that "where gambling is concerned, there should be a considered reluctance on the part of the federal government to interfere with state policies." Fourth, interstate simulcasting accounts for less than one percent of all monies wagered on greyhound racing. A matter so minor within the scale of the industry surely does-not merit federal attention. Fifth, because there is no national problem with the greyhound industry that -needs "fixing", IGRA is revealed to be a "private interest" bill. it would place the federal government in a position of furthering the interests of dog owners in general and the NGA in particular. Sixth, the bill would further burden our federal court system by providing automatic access to the federal district courts at a time when our courts are already overwhelmed with other, more significant, issues.

IGRA IS NOT SIMPLY IHRA APPLIED TO THE GREYHOUND INDUSTRY: THE TWO INDUSTRIES DIFFER MARKEDLY

A. Unlike the Horse Act, IGRA Is Controversial

In stark contrast to the greyhound bill before you today, the interstate Horse Racing Act was ultimately non-controversial. It reflected the united efforts of the horse industry to deal with what was then perceived as OTB's threat to live racing. The Horse Act passed Congress on voice votes in 1978 with little or no opposition precisely because all differences had been resolved within the industry before the bill was brought to Congress for ratification.

The circumstances which initially prompted IHRA are also not analogous to those which face the greyhound industry. in 1976, attempts were made by Congress to prohibit OTB because of concerns within the horse industry that OTB was hurting track revenues by reducing the attendance at tracks, and thereby placing the entire sport in jeopardy. That bill, H.R. 14071, ultimately passed the House of Representatives by a vote of 315-86, but the Senate did not consider the legislation before the end of the 94th Congress.

In 1977, similar legislation was introduced in the Senate (S. 1185) and was reported out of the Senate Commerce Committee. Off-track betting interests initially bottled up the bill and might have killed it, if horse owners and track owners had not joined with them to work out a final compromise that was presented to Congress and signed into law.

While passage of the Horse Act was motivated by problems with state cooperation and fears that OTB would ruin the horseracing industry, neither of these concerns pertain to greyhound racing today. State cooperation is not only widespread, but the greyhound industry is doing fine. Nine new tracks were scheduled to open in 1990 and 1991.

Simulcasting of greyhound racing has further strengthened the industry. Simulcasting began in 1983. Twelve states are now involved in simulcasting of greyhound races in varying degrees: Arizona, Colorado, Florida, Oregon, Rhode Island, Nevada, West Virginia, South Dakota, Connecticut, Iowa, New Hampshire and Wisconsin.

Some tracks in these states use simulcasting sparingly. Arizona, Colorado, and Connecticut exclusively engage in intrastate simulcasting which is beyond the scope of this bill. The Geneva Lakes Kennel Club in Wisconsin received only one simulcast race in 1990—the Race of Champions which was held in Multnomah, Oregon. Although the simulcast race was in addition to, not instead of, any live race at Geneva Lakes, nevertheless, the Wisconsin track operator put all the money wagered on the simulcast into a purse in which the Wisconsin kennel operators shared, even though their dogs had nothing to do with the race.

Although simulcasting has benefited greyhound racing1 it will never replace the pageantry of live racing which is the lifeblood of the industry. Greyhound simulcasts usually occur at full-scale tracks and supplement live races. These extra simulcast races may provide a means to sustain interest in greyhound racing year round by enabling a track to stay in business when it otherwise would be closed because of off-season weather. Revenue from simulcasting also assists track owners in paying for the upkeep and constant upgrade of their facilities.

B. The Contractual Nature of the Parties in Greyhound and Horseracing Is Not Comparable

Not only are the facts which gave rise to the Horse Act wholly different from those confronted by the greyhound industry1 the two industries differ fundamentally in how contracts are written. IGRA presumes horse owners and greyhound owners contract in the same way with their respective track owners. They do not. IGRA calls for greyhound owners' groups to give their consent to the host track before an interstate simulcast can occur, yet greyhound owners do not deal directly with track operators. The term "greyhound owners" is in some sense a misnomer. Owners may more accurately be described as breeders who lease or sell their dogs to kennel operators. Under the statute, the breeders would become the bargaining unit, yet it is the kennel operators, not the breeders, who race the dogs, work at the track, and contract with track operators. Because IGRA's language is merely copied from the Horse Act with no attention to the actual business of the greyhound industry, its effect is to remove kennel operators from the bargaining table by federal fiat.

Nowhere is the irrationality of IGRA's assumption that greyhound owners and horseowners are interchangeable more glaring than in Section 5(b)(1) and 5(b)(2) of the statute. These provisions borrow language about market constraints drafted specifically for the location of horsetracks and OTB in New York, and Connecticut and imposes these complicated provisions on the greyhound industry. The transfer of such provisions makes no sense when applied to greyhound tracks, and could actually result in interstate warfare over simulcasting, precisely the kind of disagreement Congress surely wants to avoid, not create. it is also perplexing that IGRA's advocates are in a rush to bootstrap the Horse Act, another industry's bill, onto the greyhounds when that Bill has never even been subjected to oversight hearings by Congress.

II. THE GREYHOUND INDUSTRY IS PROSPERING WITHOUT FEDERAL INTERVENTION

According to AGTOA's annual summary of greyhound racing, the number of performances tripled in ten years, increasing from 5,522 in 1980 to 16,764 in 1990. The "handle" or gross sum collected at such events also increased from $2.1 billion in 1980 to $3.5 billion in 1990. while these figures demonstrate that the greyhound industry is thriving, nevertheless, according to the Association of Racing Commissioners International, more than four times as much money is bet on horses than greyhounds. ($3.27 billion in 1989 on greyhounds verses $13.9 billion on horses in the same period). when all simulcasting is considered (inter and intrastate, races simulcast to OTB parlors and to tracks), figures show that almost thirty times more money was wagered on horse simulcasts than on greyhound simulcasts ($4.8 billion on horses versus $164 million wagered on greyhounds).

Despite the fact that our industry is dwarfed by the horse industry (which is the second largest spectator sport behind baseball), since the passage of the interstate

Horse Racing Act, greyhound races have increased by 242 percent without federal intervention while horse racing has grown by less than 18 percent with such intervention. Greyhounds raced 90,000 times in 1978 as compared to 218,000 races twelve years later. in contrast, horses raced 127,000 times in 1978 and 155,000 times eleven years later. in 1978, attendance at dog races was 20 million; in 1990 it was over 29.4 million. The states have benefited from the greyhound industry's expansion. in the period from 1978 to 1990, the money paid to states through greyhound racing increased by eighty-five percent from $122.6 million to $227 million.

Mr. Chairman, clearly the problems that plagued the horse industry in no way apply to the greyhound industry today. Why then, should its bill? Without proof of a problem, IGRA should be understood as a potential destabilizing influence on the greyhound industry which must increasingly compete with other forms of gaming. State lotteries, for instance, have multiplied since the passage of IHRA. As a result, greyhound races face added competition for a finite number of gaming dollars. while the greyhound industry has continued to expand in this competitive period, it is particularly sensitive to unnecessary federal intervention like IGRA that threatens to jeopardize that prosperity.

III. S. 22 INAPPROPRIATELY INVOLVES THE FEDERAL GOVERNMENT IN WHAT HAS TRADITIONALLY BEEN CONSIDERED A PROVINCE OF THE STATES

The states already regulate the greyhound industry. Many states regulate or oversee the percentage of the purse that greyhound owners may receive. (e.g., Colorado, Iowa, South Dakota, New Hampshire, Rhode Island, Wisconsin, Florida, Kansas, Massachusetts, Oregon, Arizona and Texas). State regulation of gaming is not only sound policy, it is the directive of a Presidential Commission which studied the subject carefully. in 1976, the Commission on the Review of the National Policy Toward Gambling concluded "where gambling is concerned there should be a considered reluctance on the part of the Federal Government to interfere with state policies." The Commission underscored that "gambling policy is the proper responsibility of the government entity closest to the lives of citizens—the State."

IV. INTERSTATE SIMULCASTING IS SO MINUSCULE PORTION OF THE INDUSTRY AS TO BE VIRTUALLY UNWORTHY OF CONGRESSIONAL ATTENTION

According to the most recent figures available from the Association of Racing Commissioners international, of the $3.27 billion wagered on greyhounds in 1989, only $164 million was wagered through simulcasting. Total simulcasting thus represents only five percent of the industry. Given that Colorado's simulcasting is exclusively intrastate, accounting for $130 million in 1989, and Arizona's simulcasting is exclusively intrastate accounting for $1.9 million in 1989, interstate simulcasting accounted for at best $32.1 million in 1989, or less than one percent of the money wagered in the greyhound industry. A practice so relatively insignificant in a stable industry hardly warrants Congressional attention, let alone federal legislation.

V. S. 22 IS A "PRIVATE RELIEF" BILL FOR GREYHOUND DOG OWNERS AND THE NGA

If the circumstances that led to the passage of the Interstate Horse Racing Act in the late 1970's no longer exist, if the effect of the Horse Act has never been studied, if the greyhound industry is healthy, and if state cooperation is widespread, what is the real motivation for this legislation? Candidly, Mr. Chairman, it appears to be a private bill the NGA. in meetings this June initiated by the AGOTA and held with the NGA, the NGA explicitly stated that its intention was to be the national bargaining unit for "greyhound owners' group" under the statute and that it would seek to "clarify" the law at some point to make this clear. The NGA takes this position despite the competing existence of many local kennel operators' groups currently operating in states such as Florida and Rhode island.

If so interpreted, this statute would not only supplant the bargaining power of the individual kennel operators and competing local kennel associations, it would drastically augment the power of the NGA by giving it a national veto over all local interstate simulcasting contracts. We submit that Congress would not knowingly pass a bill to institutionalize one organization as a national bargaining unit, especially at the expense and without the consent of competing associations.

Furthermore, as our testimony indicates, the "relief" requested of the Congress by the NGA is wholly unnecessary, if not inappropriate. Distribution of the "purse" or proceeds from wagers is already dealt with by private contracts, by state racing commissions, and often by state statute. There is no national problem to "fix."

Moreover, the picture of track owners as heartless profiteers that the NGA tries to paint is pure political distortion. A typical breakdown of a dollar bet at a greyhound track confirms this. in most states roughly eighty (80¢) cents goes to pay-

out wagers. Of the remaining twenty (20¢) cents—six (6¢) cents goes to pay state parimutuel taxes and fourteen (14¢) cents goes to the track. Of this 14¢, 3.5¢ to 4¢ goes to pay kennel operator's purses and approximately 3.8¢ goes to wages and benefits of track employees; 2.6¢ goes to fixed costs or overhead; 2.6¢ goes to state and county income taxes and only 1¢ is net profit to the track owner. Dog owners pay for none of this upkeep or for the costs of simulcasting. This is an average breakdown. in many states the track starts with less than 20¢. In some states, like Wisconsin, dog owners receive a higher percentage of the purse.

Not only do dog owners fare equitably when compared to track owners, dog owners have also profited from simulcasting. In Colorado and South Dakota, the money from parimutuel simulcasting wagers is distributed to dog owners with no distinction between the money a dog owner receives from an on-track performance or an off-track performance. As Jim Boese will explain, Rhode island's Lincoln racetrack signed a contract with its kennel operators to pay them one percent of the handle from simulcasts and now pays its dogmen a share of the handle when Lincoln receives simulcasts of horseraces. Similarly, Geneva Lakes Kennel Club in Wisconsin reached an agreement with its kennel operators whereby they receive a share of any race simulcast Geneva's track (including horseraces). Additionally, when races from Daytona Beach, Florida were sent to Southland track in Arkansas, the dog owners at Southland were paid a portion of the proceeds.

If track owners were the "robber barrons" some would make us out to be, why would any such private agreements for distributions occur? The answer is simple: the premise is wrong. Without dog owners, there would be no races; without track owners, there would be no place to run those races. We work with and depend on each other. Simulcasting works to the advantage of the industry on a case-by-case, state-by-state basis. Unfortunately, the proponents of S. 22 would jeopardize a system that works with another scheme that has never been reviewed and was written for another industry over a decade ago.

VI. S. 22 WOULD CREATE NEW POSSIBILITIES FOR FEDERAL LITIGATION AT A TIME WHEN THE COURT SYSTEM IS ALREADY BURDENED

A key component of IGRA is Section 8(a), which would transform any alleged violation of this Act into a federal question deserving of access to federal district courts regard to the amount in controversy. Any wager, no matter how insignificant, placed without all the consents and approvals specified under the statute could precipitate litigation in federal court. It is no comfort to be told that because the Horse Act has not resulted in many lawsuits, the Greyhound Act would not either. (However, as litigation has recently increased under the Horse Act, that may no longer be the case.) The circumstances between the two industries are entirely different. There may have been no reason to suspect that the Horse Act would engender litigation; it reflected a consensual agreement with the horse industry. In contrast, IGRA divides our industry and clearly a divided industry is infinitely more prone to litigation. Surely litigation over any wager on interstate simulcasting, no matter how small, does not merit access to our federal courts.

CONCLUSION

For the foregoing reasons, we submit the proposed "interstate Greyhound Racing Act" should not be supported by this Committee. The bill is fundamentally unnecessary. The marketed analogy between the 1978 interstate Horse Racing Act and this proposed legislation does not withstand scrutiny. interstate simulcasting is an insignificant portion of an already regulated industry which needs no federal intervention. Furthermore, the impact of S. 22 is not only uncertain, it threatens to put the federal government in a position of "choosing sides" in a private contractual matter with unknown and potentially disruptive consequences. IGRA would create an unnecessary right of access to an already overburdened federal court system and would a id in the atrophy of federalism by interfering with the regulation of gambling, a manifestly state concern.

On behalf of AGTOA, we thank you for your time and the opportunity to express our views on this issue.

Senator BREAUX. Thank you, Ms. Kelly. Mr. Boese.

STATEMENT OF JAMES K. BOESE, VICE PRESIDENT AND GENERAL MANAGER, LINCOLN GREYHOUND PARK, LINCOLN, RI

Mr. BOESE. Thank you, Mr. Chairman, members of the committee. I am Jim Boese, vice president and general manager of the

Lincoln Greyhound Park in Lincoln, RI. I am also vice president of Sodrac Park in South Dakota.

I have worked in the greyhound racing industry for almost 30 years and have been involved in simulcasting of greyhound races since 1988.

I appreciate the opportunity to testify before you today and explain why, based on my experience, I oppose S. 22. The two principal reasons for my opposition are S. 22 is unnecessary and, two, the greyhound industry is so different from the horse industry that this bill does not make sense.

The first point, the greyhound industry does not need this bill. My own experience and that of kennel operators at our tracks show that private agreements have worked just fine to compensate dog owners when races are simulcast. About 3 days a week, our track in Lincoln, RI, would simulcast live races to Sodrac Park, SD and to Las Vegas, NV.

These simulcasts benefited the dog owners and hurt no one. Our races were simulcast to South Dakota only during their off season, when they had no live races running. During South Dakota's live season, we did not simulcast.

At Lincoln, we paid the dogmen 1 percent of the parimutuel handle wagered in South Dakota, and 25 percent of the fee we received from the races when the races were simulcast into Nevada. This agreement to share the proceeds of the simulcast with the dog owners was reached purely on the basis of a private contract we negotiated with the association of local kennel operators. No urging from the Federal Government or participation by the NGA was needed.

We simulcasted out of Lincoln from 1988 to 1990. This year we stopped because of the massive expense. It costs us $2,000 a day just to hire the uplink trucks so that we could send the signal. Now Lincoln does not simulcast any greyhound races. However, our track in South Dakota, Sodrac Park, is still involved in simulcasting.

During the off-season, when no live races are running, Sodrac pays dog tracks in Miami $500 a day to receive its simulcast. During our live season, Sodrac simulcasts live races to 6 offtrack sites within South Dakota. The dogmen receive 3.5 percent of the handle from these offtrack sites, the same percentage that they receive from the ontrack handle.

We also simulcast in one performance from Bluffs Run in Council Bluffs, IA. We pay the Iowa track 3.5 percent of the handle for the simulcast and then pay the Sodrac dogmen 1.4 percent of that handle.

At Lincoln, we have also started to receive simulcasts of horseraces from Saratoga, NY, and Rockingham, NH. We negotiated an agreement with the dogmen to give them 1.4 percent of the total handle in these horse simulcasts, even though they have no involvement in these horseraces.

As all these examples show, because private agreements are working this legislation is not necessary. This legislation is also unnecessary because most States already have legislation which requires State approval of what percentage of the purse a dog owner may receive, and that percentage is usually capped around 3.5 to

4.5 percent of the handle. These States include my own States of Rhode Island and South Dakota, as well as Arizona, Colorado, Iowa, Florida, Massachusetts, Oregon, Texas, Kansas, and Wisconsin.

There is no evidence that States need to be overruled by the Federal Government in their oversight of the industry.

My second point: It is illogical to impose the horse bill on the greyhound industry. I understand that this bill is copied from the Interstate Horse Racing Act of 1978. Mr. Chairman, I can appreciate that for people outside the industry it might look at though the greyhound industry is so similar to the horse industry that the word "greyhound" could just be substituted for the word "horse," as it has been in IGRA.

As someone inside the industry, let me assure you that is incorrect. The Horse Act applied to the greyhound industry makes no sense. First of all, section 5(b) (1) and (2) of the statute deals with market consents in circumstances where OTB offices have to ask permission of neighboring or out-of-State tracks before an interstate simulcast can be transmitted. It is no surprise that these provisions, with their detailed requirements, are irrational when applied to the greyhound industry.

They were specifically drafted to be tailored to the location of the tracks and offtrack betting parlors in New York and Connecticut. Mr. Chairman, I doubt that even IGRA supporters understand how this would affect the industry. It could easily result in an out-of-State track having a veto over a competitor track's simulcast. IGRA supporters cannot dispute that this makes no sense when applies to greyhound racing. Because the effects are unknown, our fear is that these provisions could result in stalemate or mass confusion if applied to greyhounds.

If IGRA supporters want to draw the analogy between our industry and the horse industry, they ought to bear in mind that the horse owners governed by IHRA often do not fare as well as dog owners governed only by State legislation. For example, whereas South Dakota pays the dog owners the same for ontrack as for offtrack simulcast, Rockingham, NH's horse track pays horse owners only 35 percent of what they get from live racing on their simulcast.

The dog owners also ignore all the expenses the track owners incur from simulcast. When we take horseraces from Saratoga and Rockingham, we have to pay the New York Racing Association 5.25 percent of the handle and pay Rockingham 5 percent of the handle. This fee is then split between the track and horsemen. Most importantly, those percentages were obtained as a result of private negotiations between the horsemen at the track and the track owners.

Finally, Mr. Chairman, you should know that all is not well with the Horse Act. The Horse Act has become unmanageable in recent years due to the proliferation of simulcasting and, frankly, is often honored in the breach. Recently, the horse bill triggered disputes between States and virtual boycotts on the part of certain horse owners groups as they competed over which organization has the right to represent horse owners under the IHRA.

The litigation has even found its way to the Federal district court and resulted in preliminary findings of antitrust violations. I know

of two cases, the Birmingham Turf Club in Alabama and Blue Ribbon Downs in Oklahoma. In both cases, the national HBPA, rather than the local HBPA, used their influence to prevent a simulcast signal, a violation of the Horse Racing Act.

If litigation under the horse bill is on the increase, even though the industry supported that bill, imagine what could happen if the greyhound bill were passed over the strenuous objections of one-half the industry. There would likely be much more Federal court litigation in the future.

To sum up, Mr. Chairman, we do not need Federal legislation because there is nothing wrong with the greyhound industry. Whatever bumps we have experienced can be worked out in private negotiations or with State supervision. Frankly, this bill pays no attention to our industry but blindly bootstraps us with the particulars of another industry. In the process, it threatens to create problems within the industry and between the States where now there are none.

Before I finish, Mr. Chairman, I would like to try and address some of the issues that were brought before you from the previous panel. In Rhode Island, every type of simulcasting, offtrack betting, intertrack, interstate, intrastate type of simulcast wagering is addressed in either legislation or in contract with our local kennel owners, and the legislation that we do have in Rhode Island was also as a result of negotiations with our local kennel group and their lawyer and working together with the State legislature to get that legislation.

Some of the things that were said by the previous panel just do not occur in Rhode Island, they do not occur in South Dakota—two places I am very familiar with.

I appreciate the committee's time and would be glad to answer any questions.

[The prepared statement of Mr. Boese follows:]

PREPARED STATEMENT OF JAMES BOESE

I am Jim Boese, Vice President and General Manager of Lincoln Race Track in Lincoln, Rhode Island. I am also Vice President of Sodrac Park in South Dakota. I have worked in the greyhound racing industry for almost thirty years, and have been involved in simulcasting of greyhound races since 1988. I appreciate the opportunity to testify before you today and explain why, based on my experience, I oppose S. 22. The two principal reasons for my opposition are: (1) S. 22 is unnecessary; (2) The greyhound industry is so different from the horse industry that this bill doesn't make sense.

(1) THE GREYHOUND INDUSTRY DOESN'T NEED THIS BILL

My own experience and that of the kennel operators at our tracks shows that private agreements have worked just fine to compensate dog owners when races are simulcast.

About three days a week, our track in Lincoln, Rhode Island would simulcast live races to Sodrac Park, South Dakota and to Las Vegas, Nevada. These simulcasts benefited the dog owners and hurt no one. Our races were simulcast to South Dakota only during their off-season when they had no live races running. During South Dakota's live season, we did not simulcast. At Lincoln's track, we paid the dogmen one percent of the parimutuel handle wagered at South Dakota and 25 percent of the fee we received when our races were simulcast into Nevada. This agreement to share the proceeds of the simulcast with the dog owners was reached purely on the basis of a private contract we negotiated with the association of local kennel operators. No urging from the federal government or participation by the NGA was needed.

We simulcast out of Lincoln from 1988 to 1990. This year we stopped because of the massive expense. It cost us $2,000 a day just to hire the uplink truck so that we could send the signal. Now Lincoln does not simulcast any greyhound races. However, our track in South Dakota, Sodrac Park, is still involved in simulcasting.

During the off season when no live races are running, Sodrac pays dog tracks in Miami $500 a day to receive its simulcast. We also simulcast in one performance from Bluffs Run in Council Bluff, Iowa. We pay the Iowa track 3.5 percent of the handle for the simulcast and then pay the Sodrac dogmen 1.4 percent of that handle. During our live season Sodrac simulcasts our live races to six off-track sites within South Dakota. The dogmen receive 3.5 percent of the handle from these off-track sites, the same percentage that they receive from the on-track handle.

At Lincoln, we have also started to receive simulcasts of horse races from Saratoga, New York and Rockingham, New Hampshire. We negotiated an agreement with the dogmen to give them 1.4 percent of the total handle in these horse simulcasts even though they have no involvement in these horse races and clearly their dogs do no work for this money.

As all these examples show, because private agreements are working, this legislation is not necessary. This legislation is also unnecessary because most states already have legislation which requires state approval of what percentage of the purse a dog owner may receive and that percentage is usually capped around 3.5-4.5 percent of the handle. These states include my own states of Rhode Island and South Dakota as well as Arizona, Colorado, Iowa, Florida, Massachusetts, Oregon, Texas, Kansas, Massachusetts, and Wisconsin. There is no evidence that states need to be overruled by the federal government in their oversight of the industry.

(2) IT IS ILLOGICAL TO IMPOSE THE HORSE BILL ON THE GREYHOUND INDUSTRY

I understand that this bill is copied from the Interstate Horseracing Act of 1978. Mr. Chairman, I can appreciate that for people outside the industry it might look as though the greyhound industry is so similar to the horse industry that the word "greyhound" could just be substituted for the word "horse" as it has been in IGRA. As someone inside the industry, let me assure you that is incorrect.

The Horse Act applied to the greyhound industry makes no sense. First of all, Section 5(b) (1) and (2) of the statute deals with market consents and the circumstances where OTB offices have to ask permission of neighboring or out-of-state tracks before an interstate simulcast can be transmitted. It is no surprise that these provisions with their detailed requirements are irrational when applied to the greyhound industry. They were specifically drafted to be tailored to the location of the tracks and off-track betting parlors in New York and Connecticut. Mr. Chairman, I doubt that even IGRA's supporters understand how this would affect the industry. It could easily result in an out-of-state track having a veto over a competitor track's simulcast. IGRA's supporters can not dispute that these make so sense when applied to greyhound racing. Because the effects are unknown, our fear is that these provisions could result in stalemate or mass confusion if applied to greyhounds.

If IGRA supporters want to draw the analogy between our industry and the horse industry, they ought to bear in mind that horse owners governed by IHRA often do not fare as well as dog owners governed only by state legislation. For example, whereas South Dakota pays dog owners the same for on-track as for offtrack simulcasts, Rockingham, New Hampshire's horsetrack pays horseowners only 35 percent of what they get from live racing.

The dog owners also ignore all the expenses the track owners incur from simulcasts. When we take horseraces from Saratoga and Rockingham, we have to pay the New York Racing Association 5.25 percent of the handle and pay Rockingham Park 5 percent of the handle. This fee is then split between the track and horsemen. Most importantly, even those percentages were obtained as a result of private negotiations between the horsemen and the track owners.

Finally, Mr. Chairman, you should know that all is not well with the Horse Act. The Horse Act has become unmanageable in recent years due to the proliferation of simulcasting, and frankly is often honored in the breach. Recently, the Horse Bill triggered disputes between states and virtual boycotts on the part of certain horseowners' groups as they compete over which organization has the right to represent horseowners under the IHRA. The litigation has even found its way to federal district court and resulted in preliminary findings of antitrust violations and restraint of trade by the horsemen's groups.

If litigation under the Horse Bill is on the increase, even though the industry supported that bill, imagine what could happen if the greyhound bill were passed over the strenuous objection of half the 'industry. There would likely be much more federal court litigation in the future.

To sum up Mr. Chairman, we don't need federal legislation because there is nothing significantly wrong with the greyhound industry. Whatever bumps we experience can be worked out in private negotiations or with state supervision. Frankly, this bill pays no attention to our industry but blindly bootstraps us with the particulars of another industry. In the process it threatens to create problems within the industry and between the states where now there are none.

Thank you for your time and attention, Mr. Chairman and members of the Committee. I would be glad to answer any questions you may have.

Senator BREAUX. Thank you both, Ms. Kelly and Mr. Boese, for your being with us and your testimony.

I take it, Mr. Boese, from your track operations that you participate in, in all cases where there is a simulcast involved of the track racing that you have an agreement with dog owners who race at that track that they will be compensated for any simulcast of that track race.

Mr. BOESE. Yes, sir. And some of it is in legislation, and that legislation was as a result of our negotiating with the dogmen and working with them and their lobbyist in the State legislature.

Senator BREAUX. So, really in your situation you would not be affected in any way, as I see it, by this legislation, because essentially the legislation requires that you have a written agreement with the dog owners, and you are telling us that you have in fact a written agreement with your dog owners dealing with any simulcast of their activities.

Mr. BOESE. Well, the only difference is that the legislation takes care of the current contract period. As soon as that contract period is over, then we have to negotiate with what is now the owners group. I have no way of objecting to negotiating with our local kennel owners. It is just that the NGA does not represent the majority of the kennel owners at my track.

Senator BREAUX. The point I am trying to make is that this thing requires a written agreement between the dog owners and I guess we can talk about a definition of how to define the owners, that they have a contract or written agreement that they be compensated for any simulcast, and that is all it calls for.

In your situation, you have a written agreement that compensates the dog owners for any benefits that are obtained from a simulcast.

Mr. BOESE. Yes.

Senator BREAUX. Ms. Kelly, he points out that Rhode Island has a law that apparently affects the intrastate transmission of a simulcast in Rhode Island but it also, according to Mr. Boese, affects the interstate simulcast of that activity.

Let me ask Mr. Boese, and then I will ask Ms. Kelly the question. Does the Rhode Island law require you to have an agreement with the dog owners on a simulcast transmission of activities in your tracks?

Mr. BOESE. No. There are several pieces of legislation, but, as an example, if we bring in a race, say the Greyhound Race of Champions, we pay our dog owners at the track 3.5 percent of whatever is handled. If we go intertrack, which in our case in the State is a jai alai fronton, we pay the greyhound owners the same thing that we pay ontrack.

Right now, with our simulcasting in of horseracing, we pay the greyhound owners 1.4 percent. We just started that last Friday, and in 2 days it increased that week's purses by $7,000.

Senator BREAUX. I appreciate that. What I am trying to find out is what does Rhode Island law require. The Rhode Island law, I take it, requires that a track owner have an agreement with the dog owners if they probably run their dogs at their track and also if you as a track owner simulcast that race the Rhode Island law requires you to have an agreement with the dog owners.

Mr. BOESE. Well, the Rhode Island law speaks to all the things that I just said, and if we wanted to simulcast our races out of Lincoln, say to another track like South Dakota again, then our contract with the kennel operators speak to that. And that contract, much to the chagrin of the NGA, was accomplished through several meetings with our dog owners, their lawyer, and it was negotiated. They got some of the points they wanted and we got some of the points we wanted.

Senator BREAUX. I appreciate that. I congratulate you for being able to get an agreement. But the problem is, why do you do it? Does the Rhode Island law require you to negotiate with your dog owners on simulcast?

Mr. BOESE. No, it does not.

Senator BREAUX. You just do it because you think it is good business?

Mr. BOESE. I think it is good business.

Senator BREAUX. OK. Ms. Kelly, the concern that I am hearing is that you do not need to have a Federal law, because some of the States are requiring that they be compensated already. But is it not perfectly clear that a State and the State legislature would not have the legal authority under the Constitution of the United States to regulate the interstate transmission of simulcast of an activity between two States? Is there any doubt in your mind as a lawyer that a State cannot interfere or unduly restrict interstate commerce?

Ms. KELLY. I am not going to tell a Member of the U.S. Senate that the States can go ahead and rule on interstate matters, no, sir. But the State racing commissions do oversee what goes on in their States, which include simulcasting.

Senator BREAUX. But if a State passes a law that says a track in Louisiana—we do not have a dog track, but if you simulcast that to Las Vegas, NV, the State of Louisiana does not have the authority clearly to regulate the interstate transmission of that signal from one State to the other.

Ms. KELLY. I am aware—and I will confess that I am not an expert in the greyhound industry, but I am aware through my being immersed in it for the last two weeks or so that there are State statutes, such as Florida, which have breakdowns for even interstate shares of the purses.

Senator BREAUX. They may have the law, but I think it is absolutely clearly unconstitutional for a State to enact laws that regulate the interstate shipment of anything of value, whether it is a TV signal of value or it is a cargo of value or what have you. And that is what we are trying to get at.

Apparently, Mr. Boese, you are doing what we really are asking be done—negotiate with the owners on compensation for taking their product mixed with your product, a track, and then sending it to somebody else to be compensated for. You are doing what we are trying to get accomplished here.

Apparently that is not true in every area.

Mr. BOESE. I am not a lawyer, but just to address the point you were talking about just now, we—and I know what you are saying, but in our case, when we were simulcasting out of Lincoln into South Dakota, we asked for an attorney general's ruling on that, and he said that that was a racing commission thing. But there is no law, like you say.

And on the second point about the negotiations, I do not know if I am the only track operator in the United States that negotiates with the kennel owners.

Senator BREAUX. Oh, I am not saying you are the only one.

Mr. BOESE. But I am on the simulcast committee of the American Greyhound Track Operators. I did not participate in the meeting in Miami because my plane was late going down there. I found out what happened afterward, and some of the points that were brought up there, I think everybody is willing to sit down and negotiate it. It is just that there are some time restraints. That was the first meeting.

There are some letters that went back and forth between our president and the president of their association. In fact, I would like to have them submitted for the record because the NGA did not.

Senator BREAUX. Without objection, we will make it part of the record. I assure you, I have seen them all.

[The information referred to follows:]

LETTER FROM ARTHUR E. CAMERON

MAY 2, 1991.

KAY SPITZER,
President, American Greyhound Track Operators Association, 320 Northwest 115th Street, Miami Shores FL 33168

DEAR KAY, I refer to your recent discussion in Abilene, Kansas, with National Greyhound Association president Dutch Koerner regarding the pending Interstate Greyhound Racing Act of 1991.

Dutch advises me that you would like to meet to discuss the concerns of the AGTOA regarding certain provisions of our legislation. Inasmuch as your primary supporters, Messrs. Callahan and Bilirakis, have recommended that we negotiate these issues, and our legislative sponsor, Congressman Slattery, has agreed, I would suggest that we meet here in Washington, D.C., in Congressman Slattery's office on a mutually convenient date to resolve these matters.

If you will advise me who will be representing the AGTOA and determine several alternative dates for this meeting, I will handle the arrangements with Congressman Slattery and the NGA. While we look forward to working with you in resolving this matter, we wish to make it clear that we will continue to pursue our current legislation until a compromise has been effected.

Sincerely,

ARTHUR E. CAMERON.

LETTERS FROM KAY SPITZER, PRESIDENT, AMERICAN GREYHOUND TRACK ASSOCIATION

JUNE 12, 1991.

HERBERT KOERNER,
1845 E. Highway 40,
Hays, KS 67601

DEAR DUTCH: This letter is a follow-up to our recent conversation at the Biscayne track on June 7, 1991, regarding a possible meeting between representatives of the American Greyhound Track Operators Association (AGTOA) and the National Greyhound Association (NGA) regarding the issue of simulcasting of greyhound races. I understand that AGTOA's former President Arden Hartman had a similar conversation with you at the Dairyland Track a few days prior to our meeting.

Dutch, this letter is simply to underscore and reiterate AGTOA's willingness to discuss the issues raised by the Slattery-Breaux bills. I would hope that such discussions could lead to a conclusion satisfactory to both Associations.

As you know, when AGTOA met in California in March of this year, we informally explored the benefits of such discussions with you and other members of the NGA who were attending our public sessions. Based On those talks, the Association authorized me to appoint a subcommittee of AGTOA to meet with NGA representatives. It was my understanding that you were going to seek similar authority from the NGA, although I do not know it that occurred.

Our only other formal correspondence from NGA on this subject was a letter dated May 2, 1991, from your attorney, Art Cameron, suggesting that we meet in Washington, D.C., in Congressman Slattery's office, to "resolve these matters." Obviously, Dutch, as we discussed shortly after I received Art's letter, such a suggestion is a non-starter if we are mutually interested in making real progress to resolve any problems between our two segments of our industry.

I don't know whether AGTOA can satisfy NGA's concerns on this issue. If that cannot be done, we may both end up spending a lot of time, money and energy fighting one another in Congress. I would hope, however, that NGA could give us a clear signal what you wish to do. AGTOA is willing to meet with you and see if we can reach a meeting of the minds. I look forward to hearing from you as soon as possible.

With best wishes,
Sincerely yours,

KAY SPITZER.

JULY 5, 1991.

Mr. HERBERT KOERNER,
President, National Greyhound Association,
P.O. Box 543, Abilene, KS 67410-0343

DEAR DUTCH: Thank you for your letter of July 1, 1991, following-up on our meeting of June 29th, I, too, believe that progress was made between our two groups, although I do not believe either one of us are in a position to predict the final outcome of further discussions.

Your letter covered a number of topics, Dutch, but the most important point is one that we can both agree upon—like the NGA, AGTOA would also like to move expeditiously on further discussions so we can determine if common ground exists between our two organizations. We can best determine that issue by continuing our meetings with the smaller working group of both organizations. I would like to do so as soon as possible.

It is only if we can reach agreement among ourselves that the timing and implementing questions raised in your letter become relevant. For instance, AGTOA has an open mind on the question of whether any agreement we reach must be memorialized by federal legislation. If this is desirable, then certainly we will want to discuss this issue not only with your Congressional supporters, but with ours as well. I am sure you did not mean to imply in your letter that such broader-based consultations would not occur. I also am sure that you do not seriously believe that either Senator Breaux or Congressman Slattery will question any agreement we both reach so long as it does not violate any public interest. Since this is solely an economic issue between our two groups, I cannot conceive of any objection they might raise to a proposed agreement.

It may well be that no such legislation is needed if we can reach a meeting of the minds. Regardless, such matters should not obscure the questions of substance that we should be discussing.

As to that substance, the three issues you listed in your letter are clearly issues that need to be resolved. There are, of course, other matters that I expect we will both raise at further sessions. Your letter expressed a degree of surprise that I did not take these matters up with our Board of Directors on the 29th. I am baffled as to why you would think that appropriate. First, we did not reach any final conclusion on these three matters. Second, unless and until we have the outlines of a total agreement, it would be premature, in my view, for either one of us to agree to matters on a piecemeal basis.

Lest you read this letter as negative, let me assure you that is not the case. Our two groups do have a serious difference of opinion on many of these questions. AGTOA is committed to expeditious discussions. I'll be contacting you the week of July 15th to firm up a meeting dote.

I would also like to suggest that we both consider using the telephone for future communications. It is faster, less time-consuming, and more likely to engender the spirit of cooperation between our two organizations than this stylized exchange of letters which are meant more for the eyes of outsiders than our own interests. I wait to hear from you on the feasibility of these dates.

With best wishes,

Sincerely yours,

KAY SPITZER,
President.

Ms. KELLY. Senator Breaux, if I may, I would like to point out that it is not just Mr. Boese who does this. For example, the way simulcasting is working now in many jurisdictions due to private agreement, the dog owners are getting a share of the proceeds from races that are simulcast, not their dogs but someone else's dogs and also from horses.

Senator BREAUX. And this legislation does not affect that.

Ms. KELLY. Also, this bill does not just do what Mr. Boese is already doing, because it also straps Mr. Boese with all these market consent requirements which will fundamentally change the way he does business. Now he would have to make sure that the OTB office goes to all currently operating tracks within 60 miles or to the adjoining States. So, it adds an entire new level of constraints to his industry which presently he does not have.

Senator BREAUX. If we drop that, would you all support the legislation?

Ms. KELLY. Would I on behalf of AGTOA? I would say no, because if this is hidden in the bill and the National Greyhound Association had not thought through how ill-fit this is, we do not really know what other passages of this bill are also ill-fit.

Senator BREAUX. Let me ask one final question and then give Senator Burns his turn.

For both of you, do you feel that the dog owners who train and feed the dogs to run at the tracks have a right to be compensated for a portion, whatever the amount, of the revenues that are generated from the simulcast of that activity outside of their track in interstate commerce?

Mr. BOESE. Yes, sir, I very much believe that. In any case where I've been involved, that has been the case. The NGA or any of their representatives cannot say that, even though I have seen the written testimony that says that it did not happen at Lincoln Greyhound Park and that the kennel owners there did not see the money. That is not true.

In every case Lincoln has been involved with simulcasting, the greyhound kennel owners at the track have received compensation.

Senator BREAUX. But is it not also true, to your knowledge, that there are some track owners that in fact do not compensate their dog owners who race at their track for simulcasts of that activity?

Mr. BOESE. I understand that that is true.

Senator BREAUX. Ms. Kelly, may I ask you the same question? Do you think that the dog owners have a right to be compensated for some percentage of the revenues that are derived from the simulcast of their racing activities at a track?

Ms. KELLY. Well, what we are telling you is that this is happening in many jurisdictions and that if these private negotiations with the NGA and AGTOA could be allowed to proceed, these are differences that could be worked out.

What we are talking about, Senator, is some people get better deals in their contracts than other people get in their deal, and anybody who does not get a great deal should not be rushing to the U.S. Government to help them out because they did not get as good a deal as someone else did.

Senator BREAUX. Well, some of them have no deal. Is it not correct that some of your clients as an association in fact have no obligation, no legal obligation to negotiate with a dog owner for the product that they are running in the track. They say, "Look, we are happy that you are running at our track, we hope you win a lot of money, but we are going to simulcast that race, and we are not going to talk to you about how much money we are going to make as a result of that simulcast." Is that not the current law?

Ms. KELLY. Is that the current law?

Senator BREAUX. Yes, is that the current law? Can't they just say we are not going to talk to you, period, about the money we make from the simulcast of this race?

Ms. KELLY. And I could also be fired in 3 minutes.

Senator BREAUX. I am trying to get a yes or no. Is it not correct that under the current situation that a track owner that makes money from the simulcast of a race has no obligation to negotiate with a dog owner with regard to a percentage of those revenues?

Ms. KELLY. There is no legal obligation in many jurisdictions to do a contract deal with its dog owners, yes, but many of them do it anyway because it is bad for the industry if they do not.

Senator BREAUX. Senator Burns.

Senator BURNS. I have to pick up from there.

Clarify for me, please, for a second, Mr. Boese, if you could. I own a dog, and I want to run him at your track. Can I run him as an owner, unaffiliated with a kennel operator?

Mr. BOESE. No, sir, you cannot, not at any track in the United States. You have to lease that dog to a currently contracted kennel at the track.

Senator BURNS. I can run my horse without leasing my horse to another person.

Mr. BOESE. Right, and that is the big difference between horseracing and dog racing. The booking system facilitates greyhound racing, and open booking in horseracing facilitates horseracing. What the track needs to run the number of racing programs, they have to contract for that many dogs so they are assured that they can fill those cards.

The greyhounds come back sooner than horses do, and so the booking system where each kennel has 40 to 50 greyhounds in it works to accommodate that system.

Senator BURNS. Are you telling me, then, you could not operate, it would be very difficult to operate without these kennel operators?

Mr. BOESE. Oh, you could not. You have to have a certain number of kennels, whatever the track feels they need to run as many performances, and when the kennels are booked the kennel operators look at the caliber of dogs that the greyhound owner or the kennel owner has and what kind of supply he has.

Senator BURNS. Can you give me any idea of what a kennel operator gets if I lease my dog to him—how the fees are paid and who gets paid?

Mr. BOESE. The true owner, as they are called, the person that leases the dog, in most cases get 35 percent of what the dog runs out or 35 percent of the purses. There are other deals, but basically that is the norm in the industry.

Senator BURNS. Who pays the expenses?

Mr. BOESE. The kennel operator.

Senator BURNS. And that is grooming and feed and care?

Mr. BOESE. And everything else, yes, sir.

Senator BURNS. A lot of middle folks, and I am not real sure that we are not being asked to referee that.

Mr. BOESE. Yes, sir. And, if I might interject here, last year at Lincoln the kennel operators were paid more money than all of my other 500 employees and more than Lincoln brought to the bottom line.

Senator BURNS. I have no further questions. Thank you, Mr. Chairman.

Senator BREAUX. Let me thank Ms. Kelly and Mr. Boese—am I pronouncing it right; if I am not, I apologize.

Mr. BOESE. Yes, sir.

Senator BURNS. That is where Shepherd, MT, is, too. It is about as big as that glass.

Senator BREAUX. National Geographic does not even know where that is.

I thank you both for your testimony. I would just conclude by saying the point of our legislation, for the record, is to try and not get involved in the intricacies of contract negotiations between dog owners and track owners. That is something that should be left to the private sector. The reason why Congress is involved is because we are dealing with the interstate transmission of something of value, and the concept constitutionally is that things of value should be compensated for.

In your case, Mr. Boese, I think you have cited that in all of your simulcasts, interstate as well as intrastate, you have an agreement. Unfortunately, there are some instances where there are no agreements and there is no obligation for an agreement in the interstate transmission of something of value. I am absolutely convinced that a State cannot require that constitutionally; only the Federal government can do it.

I would urge the parties to try and get together and work up agreements. We are not saying what they ought to be. I have no

idea what they ought to be. But it would be very, I think, to the benefit of this industry if something could be arrived at that represents an agreement on the simulcast in interstate commerce.

So, with that, this will conclude this hearing. We thank all of the witnesses for being here.

[Whereupon, 11:48 a.m., the committee adjourned.]

APPENDIX

PREPARED STATEMENT OF THE NATIONAL GREYHOUND ASSOCIATION

The National Greyhound Association appreciates the opportunity to submit this document to the Committee as an addendum to the testimonials given at the hearing on Aug. 1, 1991.

During the question-and-answer period following our oral testimonies on Aug. 1, Senator Robert Kasten stated he'd not received any requests from greyhound owners in his state urging a favorable vote on S. 22, the Interstate Greyhound Racing Act of 1991. The Senator's suggestion that this may be due to the fact that racing is in its infancy in the state is a correct one. Prior to the opening of the first parimutuel track in Wisconsin just last year, there was a very small number of greyhound owners and breeders in the state (less than 20), the climate of the region being a significant factor. The number of NGA members in the state has been rapidly growing in the last 12 months—many of these people native Wisconsinites who are brand new to the sport of greyhound racing. Although climate may not allow Wisconsin to develop into a major greyhound producing state, like Florida or Texas, the presence of five successful tracks certainly creates an environment that will no doubt see many more breeding farms spring up in the next several years. A fair playing field for greyhound owners with respect to negotiations on interstate simulcasting will contribute toward the development of a healthy greyhound breeding industry in all states, including Wisconsin.

In her testimony, Deborah Kelly, representing the American Greyhound Track Operators Association, said her main point was that the proposed legislation would not work. She said there was no way to know the effect such items as the 60-mile radius referred to on p. 8 of the bill would have on greyhound racing. There is nothing magical about the 60-mile radius; as mentioned at the hearing, the language parallels the 1978 Interstate Horse Racing Act, which has worked well for that industry for 13 years. Sixty-miles is considered safely beyond the immediate market area of a racetrack—and that holds just as true for greyhound racing as it does for horse racing. The 60-mile guideline is in fact very workable in greyhound racing and puts no unjust restrictions on any racetrack.

Ms. Kelly also stated that, because this is contentious legislation, there would likely be more litigation than has been experienced in the horse industry as a result of the 1978 Horse Racing Act (recalling that there has only been one case relative to the 1978 Act in 13 years). This is an unfounded assumption. In fact, the greyhound racing fraternity has traditionally been much less litigious than our brothers in horse racing in practically every aspect of our respect games—be it the owners, breeders, trainers, track operators, etc. In horse racing, decisions by racing commissions and their stewards are frequently challenged in court, as are squabbles over racing dates. Not so with greyhound racing. The 1978 Horse Racing Act obviously did not fuel the flames of litigation in horse racing; neither will the 1991 Greyhound Racing Act in our sport.

Jim Boese, in his testimony, said that S. 22 was unnecessary legislation. That's very true—at least in the eyes of the group he represents (the American Greyhound Track Operators Association). The tracks don't think it's necessary, because the current playing field is slanted sharply in their favor. As the old saying goes, everybody likes a fair advantage. But those whose rights and hope at fairness are being trodden upon, the greyhound owners and breeders, see it another way. They strongly believe legislation IS necessary—not for the sake of gaining any advantage, only to level out the playing field.

Mr. Boese contended that there are many differences between horse racing and greyhound racing. Certainly there are some differences, but by and large, the differences are inconsequential. Both sports revolve around the activity of fans wagering (in the parimutuel process) on animals that have been bred, raised and train exclusively for racing. Portions of the money wagering are earmarked for purses or prize money, with the greatest racers receive the greatest rewards. The most nota-

ble difference between the sports is the booking or contract system that exists in greyhound racing, as described in our previous written and oral testimony. It's this unique booking system in greyhound racing that renders so-called negotiations in greyhound racing a sham. In fact, we would go so far as to say that, because of this single difference of the booking system, the Greyhound Racing Act is much more urgently needed for the protection of the rights of greyhound owners than the Horse Racing Act was needed for its participants.

Mr. Boese speaks of how private negotiations between his track at Lincoln, R.I., and the kennel operators there have worked just fine. In our testimony, we explained why track operators are endeared to negotiating with their kennels, because such negotiations constitute no true negotiations at all! What of the actual owners of the greyhounds being involved with the negotiations? In effect, Lincoln and Mr. Boese have appointed (through the booking system) the persons who'll "negotiate" for the owners. Shouldn't it be the owners who select the persons who'll negotiate for them, not the track? It's also interesting that simulcasting has been an issue at Lincoln for several years now—but only recently, with all the legislative attention being given the issue, that Lincoln finally "negotiated" an agreement with their kennels. (Keep in mind that Lincoln is one of the more "progressive" tracks in this regard, as practically all other tracks don't even have an agreement with their kennel operators!) Mr. Boese also said Lincoln has, since Day One, always paid its kennels for the use of their greyhounds in simulcasting. Yet, just one year ago, NGA Vice President Ross Lingle testified at a House Subcommittee hearing that the way he found out his greyhounds were being used for simulcasting from Lincoln was by accidentally catching them on TV in his living room in Altus, Ok., via his satellite dish. Although Lincoln claims it has always reimbursed the owners for the service of simulcasting the greyhounds, Lingle states that, in addition to him to being apprised of the simulcasting, the pay sheets from Lincoln never reflected any payment to the greyhound owners for the simulcasting service. Whether Lincoln has always paid owners for the simulcasting remains unclear. It would seem only appropriate that Lincoln should at least have notified the owners of the activity and tell owners how it would reflect on purses in some specific manner.

Again—Lincoln, with all its failings, has actually been one of the more progressive tracks, when compared with the rest of the racetrack fraternity. As Mr. Boese himself admits, the greyhound owners should receive financial remuneration for the use of their greyhounds for simulcasting purposes. They're certainly not getting it at the scores of other tracks where simulcasting is occurring. And they're not about to receive any modicum of fair treatment until legitimate negotiations between all the parties involved—including the group representing the owners of the greyhounds (not the tracks-selected kennel operators)—are required.

That's all S. 22 does, is require the various groups to sit down and negotiate the terms of interstate simulcasting. It doesn't set the terms of what they negotiate, it doesn't expand the federal bureaucracy, it doesn't cost taxpayers a penny. We respectfully urge you to support this legislation.

LETTER FROM JAMES E. MACKEY FOR L. RALPH MECHAM, DIRECTOR, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

AUGUST 12, 1991.

Honorable ERNEST F. HOLLINGS,
U.S. Senate,
Washington, DC 20510-6125

DEAR MR. CHAIRMAN: As Secretary of the Judicial Conference of the United States, I am writing to inform you that the Judicial Conference opposes enactment of S. 22, the Interstate Greyhound Racing Act, insofar as the bill creates a private right of action in the Federal courts for damages resulting from the making of interstate off-track wagers on greyhound races without the consent of specified racing interests in the state in which the traces are held.

The enforcement of State regulatory schemes relating to such matters as off-track betting on greyhound racing is a matter traditionally left to State regulation. Whatever need there may be for Federal legislation can be satisfied without creating a private damage action in Federal court. I urge you to strike out the private right of action provision of the bill at the appropriate time.

I would ask that this letter be made part of the formal hearing record.

Sincerely,

JAMES E. MACKE, JR.,
for L. Ralph Mecham, Director.

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ISBN 0-16-038545-8